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THE

CABINET CYCLOPÆDIA.

(58)

CONDUCTED BY THE

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Biography.

EMINENT BRITISH LAWYERS.

BY

HENRY ROSCOE, ESQ.

BARRISTER AT LAW.

LONDON:

PRINTED FOR

LONGMAN, REES, ORME, BROWN, AND GREEN,

PATERNOSTER-ROW;

AND JOHN TAYLOR,

UPPER GOWER STREET.

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LIVES

OF

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BIOGRAPHY.

BRITISH LAWYERS.

SIR EDWARD COKE.

1550—1634.

EDWARD COKE, afterwards solicitor and attorney-general, and successively lord chief justice of the courts of common pleas and of the king's bench, was descended from an ancient family in the county of Norfolk. He was the son of Robert Coke, Esq. of Mileham, in that county, a barrister of great practice, and a bencher of Lincoln's Inn, by Winifred, daughter and coheiress of William Knightley, of Morgrave Knightley, in the same county. He was born at Mileham in the year 1550; and at the age of ten years was sent to the free-school at Norwich; whence he was removed to Trinity College, Cambridge, where he remained for four years. At the expiration of that period he became a member of Clifford's Inn; and in the course of the next year of the Inner Temple. While a student of the latter society, he is said to have exhibited proofs of the high legal talents by which he was afterwards so greatly distinguished. At the end of six years he was called to the bar; a very short probation, the usual period being at that time eight years.*

The first case in which he appeared in the king's bench was the Lord Cromwell's case, in Trinity term

* Dugdale's Origines, p. 159.

1578.* About the same period he was appointed reader of Lyon's Inn, where the excellence of his lectures attracted much attention. A few years after he was called to the bar he married Bridget, daughter and coheiress of John Paston, Esq. of Norfolk; an alliance which not only brought him a very considerable fortune, but connected him with several of the noblest families in the kingdom. His practice now began to increase rapidly; he was chosen recorder of Coventry and of Norwich; in 1592 he was appointed solicitor-general, and was soon afterwards advanced to the post of attorney-general. Having been returned to parliament as the representative of his native county, he was chosen speaker in the thirty-fifth of Queen Elizabeth.

One of the most celebrated cases in which Coke appeared, while he held the office of attorney-general, was that of the Earls of Essex and Southampton; who, on the 19th of February 1600, were tried before the Lords for high treason. In the conduct of the charge against the accused, the attorney-general displayed some of that acerbity of temper and coarseness of feeling which have stained a character, in other respects deserving of the highest esteem. "Now, in God's most just judgment," said he, "he of his earldom shall be Robert the last, that of the kingdom thought to be Robert the first." †—Essex indignantly answered him, "Will your lordships give us our turns to speak? for he playeth the orator, and abuseth our ears and us with slanders; but they are but fashions of orators in corrupt states." But it was during the trial of Sir Walter Raleigh, which took place three years subsequently to that of Essex, that the full violence of Coke's temper displayed itself. It is difficult to assign any adequate cause for the indecent eagerness with which he pressed the case against the prisoner, and for the harsh and cruel language with which he assailed him. In the course of the attorney-general's address, Raleigh interrupted him. "To whom speak you this? you tell me news I never heard of."—To which

* 4 Rep. 120. † State Trials, vol. i. p. 1339.

Coke replied: "Oh, sir, do I? I will prove you the notoriest traitor that ever came to the bar. After you have taken away the king, you would alter religion, as you, Sir Walter Raleigh, have followed them of the bye in imitation, for I will charge you with the words."—"Your words cannot condemn me," said Raleigh: "my innocency is my defence. Prove one of those things wherewith you have charged me, and I will confess the whole indictment, and that I am the horriblest traitor that ever lived, and worthy to be crucified with a thousand cruel torments."—"Nay," answered Coke, "I will prove all.—Thou art a monster; thou hast an English face, but a Spanish heart.—Now you must have money. Aremberg was no sooner in England (I charge thee, Raleigh,) but thou incitest Cobham to go unto him, and to deal with him for money, to bestow on discontented persons to raise rebellion in the kingdom."—"Let me answer for myself," said Raleigh.—"Thou shalt not," was the fierce and brutal reply of Coke. Again, on Raleigh observing that the guilt of Lord Cobham was no evidence against himself, Coke replied, "All that he did was by thy instigation, thou viper! for I *thou* thee, thou traitor."—"It becometh not a man of quality and virtue to call me so," was Raleigh's dignified rebuke; "but I take comfort in it, it is all you can do."—"Have I angered you?" said Coke.—"I am in no case to be angry," was Raleigh's answer. In other instances, during the trial, similar language was held by Coke towards the prisoner, till at length Cecil observed, "Be not so impatient, Mr. Attorney-General: give him leave to speak." On this rebuke Coke sat down in anger, and was with difficulty persuaded to proceed. When, at length, he resumed, he burst forth into a fresh torrent of invective, accusing Raleigh, not only of the darkest treasons, but applying to him the epithet of "Damnable atheist." Nor was it merely by the intemperance of his language that Coke on this occasion disgraced himself. He adduced evidence against the prisoner, which, even in the then lax practice in the case of trials for treason, was obviously

illegal. The declarations of living witnesses were brought forward; and it was very principally upon this proof that the prisoner was convicted. Many years after this conviction, and notwithstanding the implied pardon upon which Raleigh insisted, arising out of his subsequent employment under the crown, he was brought before the court of king's bench to have execution awarded against him; and upon this occasion Sir Edward Coke, who presided as chief justice, retracted the slander which he had cast on the religious opinions of the prisoner. "I know," said he, addressing Raleigh, "you have been valiant and wise, and I doubt not but you retain both these virtues; for now you shall have occasion to use them. Your faith hath heretofore been questioned; but I am resolved you are a good Christian; for your book, which is an admirable work, doth testify as much."*

In the year 1606, Sir Edward Coke, as attorney-general, conducted the prosecution against the parties implicated in the gunpowder conspiracy. His speech on this occasion exhibited a considerable portion of the same acrimony which had distinguished him on the trials of Essex and Raleigh. The violence which had before been directed against individuals, was now extended to the whole body of the jesuits, against whom he declaimed with the utmost vehemence. Nor was he satisfied with denouncing the pains of the law against the accused. When Sir Everard Digby, interrupting him, said, "that he did not justify the fact, but confessed, that he deserved the vilest death, and the most severe punishment that might be, but that he was an humble petitioner for mercy and some moderation of justice," Coke replied, with a cold-blooded cruelty, which must for ever stain his memory—"that he must not look to the king to be honoured in the manner of his death, having so far abandoned all religion and humanity in his action; but that he was rather to admire the great moderation and mercy of the king, in that, for so exorbitant a crime, no new torture answerable thereto was devised to be

* State Trials, vol. ii. p. 35.

inflicted on him. And for his wife and children: whereas he said that for the catholic cause he was content to neglect the ruin of himself, his wife, his estate, and all, he should have his desire, as it is in the Psalms: Let his wife be a widow, and his children vagabonds; let his posterity be destroyed, and in the next generation let his name be quite put out." The peculiar quaintness of Coke's style was frequently displayed in the course of this speech. "S. P. Q. R.," says the orator, "was sometimes taken for these words, *Senatus populusque Romanus*, the senate and people of Rome; but now they may truly be expressed thus, *Stultus populus quærit Romam*, a foolish people that runneth to Rome." "And here," continues the reporter, "was very aptly and delightfully inserted and narrated the apologue or tale of the cat and the mice. The cat having a long time preyed upon the mice, the poor creatures at last for their safety contained themselves within their holes; but the cat, finding his prey to cease, as being known to the mice that he was indeed their enemy and a cat, deviseth this course following, viz. changeth his hue, getting on a religious habit, shaveth his crown, walks gravely by their holes, and yet perceiving that the mice kept their holes, and looking out suspected the worst, he formally and father-like said unto them, *Quod fueram non sum, frater, caput aspice tonsum!* Oh brother! I am not as you take me for, no more a cat; see my habit and shaven crown! Hereupon some of the more credulous and bold among them were again, by this deceit, snatched up; and therefore, when afterwards he came as before to entice them forth, they would come out no more, but answered, *Cor tibi restat idem, vix tibi præsto fidem.* Talk what you can, we will never believe you; you have still a cat's heart within you. You do not watch and *pray*, but you watch to *prey*. And so have the jesuits, yea, and priests too; for they are all joined in the tails like Samson's foxes. Ephraim against Manasses, and Manasses against Ephraim; and both

against Judah." * Upon the trial of Garnet, for his participation in the same conspiracy, Coke thus described the prisoner:—"He hath many gifts and endowments of nature; by art learned, a good linguist, and by profession a jesuit, and a superior, as indeed he is superior to all his predecessors in devilish treason; a doctor of jesuits, that is, a doctor of five D.D.'s, as dissimulation, deposing of princes, disposing of kingdoms, daunting and deterring of subjects, and destruction." † Such was the whimsical style sanctioned by the taste of the day.

It is gratifying to turn from scenes like these, where contumely and insult were added to the severe and inhuman penalties which the law itself inflicted. On the 20th of June 1606, shortly after the trials for the gunpowder plot, Sir Edward Coke was promoted from the office of attorney-general to the chief justiceship of the common pleas. From the period of his ascending the bench, the violence of temper which he had so frequently exhibited at the bar appears to have been much softened. He was succeeded in the office of attorney-general by Sir Henry Hobart, while Sir Francis Bacon was made solicitor-general, an office to which he had long aspired, and which, as he imagined, he had been debarred from filling by the efforts of Sir Edward Coke. From some cause, which it is now difficult to trace, probably from dissimilarity of character and pursuits, these celebrated men had contracted a mutual dislike for each other. Bacon envied the reputation and advancement of Coke, and Coke despised and slighted the professional acquirements of his younger rival. At length, shortly before the promotion of Coke to the bench, as it is said, Bacon gave way to his passionate feelings, and addressed to the attorney-general the following extraordinary letter:—

"Mr. Attorney,

"I thought it best, once for all, to let you know in plainness what I find of you, and what you shall find of

* State Trials, vol. ii. p. 181. † Id. p. 234.

me. You take to yourself a liberty to disgrace and disable my law, my experience, my discretion: what it pleaseth you, I pray, think of me: I am one that knows both mine own wants and other men's; and it may be, perchance, that mine mend, and others' stand at a stay. And surely I may not endure in public place to be wronged without repelling the same, to my best advantage to right myself. You are great, and therefore have the more enviers, which would be glad to have you paid at another's cost. Since the time I missed the solicitor's place (the rather I think by your means), I cannot expect that you and I shall ever serve as attorney and solicitor together; but either to serve with another on your remove, or to step into some other course, so as I am more free than I ever was from any occasion of unworthy conforming myself to you more than general good manners or your particular good usage shall provoke; and if you had not been short-sighted in your own fortune (as I think), you might have had more use of me. But that side is passed. I write not this to show my friends what a brave letter I have written to Mr. Attorney. I have none of those humours; but that I have written it to a good end, that is, to the more decent carriage of my master's service, and to our particular better understanding one of another. This letter, if it should be answered by you in deed and not in word, I suppose it will not be worse for us both, else it is but a few lines lost, which for a much smaller matter I would have adventured. So this being to yourself, I for my part rest," &c. *

Bacon has likewise left on record a relation of the manner in which the attorney-general occasionally treated him, in which the courtesy and dignity of Coke appear to little advantage.

" I moved to have a reseizure of the lands of Geo. Moore, a relapsed recusant, a fugitive, and a practising traytor; and showed better matter for the queen against the discharge by plea, which is ever with a *salvo jure*.

* Bacon's Works, vol. iv. p. 570. Biogr. Brit. vol. iii. p. 681.

And this I did in as gentle and reasonable terms as might be.

" Mr. Attorney kindled at it, and said, ' Mr. Bacon, if you have any tooth against me, pluck it out; for it will do you more hurt than all the teeth in your head will do you good.' I answered coldly, in these very words: —' Mr. Attorney, I respect you: I fear you not; and the less you speak of your own greatness, the more I will think of it.'

" He replied, ' I think scorn to stand upon terms of greatness towards you, who are less than little, less than the least;' and other such strange light terms he gave me, with that insulting which cannot be expressed.

" Herewith stirred, yet I said no more but this: ' Mr. Attorney, do not depress me so far; for I have been your better, and may be again, when it please the queen.'

" With this he spake, neither I nor himself could tell what, as if he had been born attorney-general; and in the end bade me not meddle with the queen's business, but with mine own; and that I was unsworn, &c. I told him, sworn or unsworn was all one to an honest man; and that I ever set my service first, and myself second; and wished to God that he would do the like.

" Then he said, it were good to clap a *cap. utlagatum* upon my back! To which I only said, he could not, and that he was at a fault; for he hunted upon an old scent.

" He gave me a number of disgraceful words besides; which I answered with silence, and showing that I was not moved with them." *

It is probable that these complaints were recorded for the purpose of being submitted to the king; but it does not appear that any proceedings took place in consequence.

The conduct of Sir Edward Coke on the bench, in maintaining the integrity of the judicial character, at a period when the judges were dependent on the favour of

* Bacon's Letters, by Birch, p. 22. Bacon's Works, by Montagu, vol. vii. p. 338.

the court, deserves a very particular examination. One of the earliest cases in which he was called upon to assert the independence of his judgment, arose out of the proceedings of the high commission court. The unconstitutional and dangerous measures of which that court was made the instrument, have been described by many historians. Cases in which it would have been impossible to procure a conviction in a court of common law were referred to the ecclesiastical commissioners, who did not hesitate to lend themselves to the violent and arbitrary designs of the court. The parties who were aggrieved by these unconstitutional proceedings not unfrequently appealed for protection to the courts of common law; and soon after Coke's accession to the bench, many prohibitions were moved for and granted, to stay the proceedings both of the court of high commission and of the presidents of the council of York and Wales. At length, the number of these prohibitions attracted the attention of the court; and the judges were called upon to justify their proceedings. This justification was prepared and communicated to the council by Sir Edward Coke, and contains a full and bold defence of the conduct pursued by himself and his brothers in granting prohibitions to the courts of the lords president.* [See Note 1.] The churchmen and courtiers, however, were far from being satisfied with these reasons; and Bancroft, the archbishop of Canterbury, preferred a formal complaint to the king against the conduct of the judges of the common law. In consequence of this complaint, both the archbishop and the judges were, in the month of November 1608, summoned before his majesty; when Bancroft insisted that the king had power in his own person to determine of what matters the ecclesiastical court had cognizance; and that, if he was so pleased, he might take any cause from the determination of the judges and decide it himself. And the archbishop said, "that this was clear in divinity, that such authority belongs to the king by the word of God in the Scripture." This singular doctrine

* 12 Rep. 50.

received an immediate and unqualified denial from Coke, with the assent of all his brethren present; "and it was," says he, "greatly marvelled that the archbishop durst inform the king that such absolute power and authority belonged to the king by the word of God." The conclusion of this conference is admirably told by the chief justice himself. "Then the king said, that he thought the law was founded upon reason, and that he and others had reason as well as the judges. To which it was answered by me, that true it was that God had endowed his majesty with excellent science and great endowments of nature; but his majesty was not learned in the laws of his realm of England. [Note 2.] And causes which concern the life or inheritance, or goods or fortunes, of his subjects, are not to be decided by natural reason, but by the artificial reason and judgment of law; which law is an act which requires long study and experience, before that a man can attain to a cognizance of it; and that the law was the golden met-wand and measure to try the causes of the subjects, and which protected his majesty in safety and peace. With which the king was greatly offended, and said, that then he should be under the law, which was treason to affirm, as he said. To which I said, that Bracton saith, '*Quod rex non debet esse sub homine, sed sub Deo et lege.*'"* The event of this conference soon became public, and is thus related in a contemporary letter: "On Sunday, before the king's going to Newmarket, * * * my Lord Coke and all the judges of the common law were before his majesty, to answer some complaints of the civil lawyers for the general granting of prohibitions. I heard that the Lord Coke, amongst other offensive speech, should say to his majesty that his highness was defended by his laws; at which saying, and with other speech then used by the Lord Coke, his majesty was very much offended, and told him that he spake foolishly, and said that he was not defended by his laws, but by God; and so gave the Lord Coke, in other words, a very sharp reprehension both for that and other

* 12 Rep. 63. See also 2d Inst. 601. State Trials, vol. ii. p. 131.

things, and withal told him that Sir Thomas Compton (the judge of the admiralty court) was as good a judge as Coke." * The boldness and ready learning displayed by Sir Edward Coke at this interview cannot be too much admired.

About four years after this attempt to depress the courts of common law, Abbott, who had succeeded Bancroft in the see of Canterbury, renewed the complaints against the judges, and, as before, both parties were summoned before the king. A vehement controversy ensued between the archbishop and Coke, and he and the other judges of the common pleas offered reasons in support of the course they had adopted. They were again questioned on a subsequent day; but, remaining constant in their opinion, the other judges were sent for, and, under the direction of Ellesmere, the lord chancellor, declared themselves of a contrary opinion. Upon this, all the judges were again directed to attend the council; but the justices of the common pleas were commanded to retire, because, as they were informed by the lord treasurer, they had contested with the king. Ultimately, the judges of the king's bench and the barons of the exchequer differing in their opinions, it was resolved in council, that the court of high commission should be reformed.† This was the most successful blow that had yet been aimed at the exorbitant powers of these dangerous tribunals.

The reformed commission, as it was termed in the language of the court, was accordingly prepared; and, in order, no doubt, to prevent his voice being raised against it, the name of Sir Edward Coke, together with those of some others of the judges, was inserted in it. On its being published in the great chamber of the archbishop at Lambeth, the chief justice of the common pleas and the other judges named in it duly attended. But Coke, on being commanded to sit by force of the commission,

* Lodge's Illustrations, vol. iii. p. 364. Aikin's Court of King James, vol. i. p. 349.

† 12 Rep. 85.

refused; and stated the reasons of his refusal, in which his brethren seemed to concur. He then requested that the commission might be read, when it was found to contain many points against the laws and statutes of England, upon which the other judges expressed their satisfaction that they had not sat under it. While the commission was read, Coke stood, refusing to sit as he was requested by the archbishop and the lords, and by his example this course was adopted by the other judges.* Nothing could have been accomplished more favourable to the interests of freedom than the stripping these illegal courts of the sanction which a notion of their legality afforded. For this inestimable service the country was indebted to Coke.

In the year 1612, another most important constitutional question, respecting the nature and efficacy of the king's proclamations, was submitted to the consideration of Sir Edward Coke. From the first commencement of his reign, James had been in the habit of issuing numbers of these edicts, in which he frequently usurped the province of parliament, and denounced penalties upon the commission of acts to which no punishment was affixed by the law. The first proclamation which he issued upon his arrival in England was dated from Burghley, and related to the apprehension of William Ruthven and Patrick Ruthven, two of the Gowrie conspirators. This was followed by a proclamation against monopolies, and subsequently by a variety of others, making the total number of those issued in the first year of his reign thirty-seven.† For some time the issuing of these edicts does not appear to have excited much jealousy. "The people," says Wilson the historian ‡, "took them for good payment a great while, till the multitude of them lessened their valuation." At length the frequency of these extraordinary attempts to supersede the usual functions of the legislature roused the attention of the commons; and, on the 7th July 1610, a petition of

* 12 Rep. 88.
† Booke of Proclamations.
‡ Kennet, vol. ii. p. 667.

grievances was presented to the king, in which the number and nature of the proclamations which his majesty had promulgated occupied a conspicuous place. "Nevertheless," say the complainants, "it is apparent both that proclamations have been of late years much more frequent than before, and that they are extended not only to the liberty, but also to the goods, inheritances, and livelihood of men; some of them tending to alter some points of the law, and make them new; other some made shortly after a session of parliament, for matter directly rejected in the same session; others appointing punishments to be inflicted before lawful trial and conviction; some containing penalties in form of penal statutes; some referring the punishment of offenders to courts of arbitrary discretion, which have laid heavy and grievous censures upon the delinquents; some, as the proclamation for starch, accompanied with letters commanding enquiry to be made against transgressors at the quarter-sessions; and some vouching former proclamations, to countenance and warrant the latter." * Amongst the proclamations complained of were two issued in 1608: the first relating to the making of starch; the second forbidding the erection of buildings in London, and commanding the justices of the peace to pull down the same if erected contrary to the proclamation, to sell the materials, and to commit the workmen to prison.† In presenting the petition of grievances to the king, Sir Francis Bacon, one of the members commissioned to perform that duty, endeavoured to palliate the ungracious proceeding by expressions of great humility and submission. "Let not the sound of grievances," said he, in his address to the king, "though it be sad, seem harsh to your princely ears. It is but *gemitus columbæ*, the mourning of a dove, with that patience and humility of heart which appertaineth to loving and loyal subjects." ‡ James, however, had sufficient discretion

* Petition of Grievances, Howell's State Trials, vol. ii. p. 525.
† Booke of Proclamations, p. 151. 159.
‡ Bacon's Works, vol. ii. p. 212. 4to. ed.

to perceive that the gentle complaints of the dove might be changed into the angry cry of the eagle; and he therefore thought it necessary to take some steps to establish the legality of his edicts. It was accordingly determined that the judges should be consulted, doubtless under the expectation that an opinion favourable to the royal wishes might be procured from that venerable body.

On the 20th of September, Sir Edward Coke was summoned to attend the lord chancellor, lord treasurer, and some other members of the council; and was directed to give his opinion respecting the legality of the two proclamations relating to the making of starch, and the erecting of new buildings in London. Excusing himself from giving an immediate answer, he begged that he might be allowed to confer with his brother judges on the matter, "and then make an advised answer according to law and reason." The members of the council present were careful that the chief justice should not be ignorant of the wishes entertained by the court. The lord chancellor said, "that every precedent had first a commencement, and that he would advise the judges to maintain the power and prerogative of the king; and in cases in which there is no authority and precedent, to leave it to the king to order in it according to his wisdom, and for the good of his subjects, or otherwise the king would be no more than the Duke of Venice; and that the king was so much restrained in his prerogative, that it was to be feared the bonds would be broken." The lord privy seal said, "that the physician was not always bound to a precedent, but to apply his medicine according to the quality of the disease." "And all concluded," adds Sir Edward Coke, "that it should be necessary at that time to confirm the king's prerogative with our opinions, although that there were not any former precedent or authority in law; for every precedent ought to have a commencement." In reply to these observations, the chief justice intimated an opinion against the legality of the proclamations, and again urged his request to be allowed a conference with his brethren, which was ulti-

mately granted; and the two chief justices, the chief baron, and Baron Altham were directed to take the subject into their consideration. In the course of Michaelmas term, their resolution was communicated to the privy council; and there can be little doubt that the constitutional terms in which that very important opinion was conveyed, were chiefly owing to the influence exerted by the chief justice of the common pleas over the minds of his brothers. The resolution was delivered in the following words:

"It was resolved, that the king by his proclamation cannot create any offence which was not an offence before, for then he may alter the law of the land by his proclamation in a high point; for if he may create an offence where none is, upon that ensues fine and imprisonment. Also the law of England is divided into three parts: common law, statute law, and custom; but the king's proclamation is none of them. Also, *malum aut est malum in se, aut prohibitum,* that which is against common law is *malum in se; malum prohibitum* is such an offence as is prohibited by act of parliament. Also it was resolved, that the king hath no prerogative but that which the law of the land allows him. But the king, for prevention of offences, may admonish his subjects by proclamation that they keep the laws, and do not offend them, upon punishment to be inflicted by the law, &c. Lastly, if the offence be not punishable in the star-chamber, the prohibition of it by proclamation cannot make it punishable there." * Nothing more decisive than these resolutions could have been devised by the warmest advocates of constitutional liberty; and so conclusive were they deemed, even by the court, that after this period, as we learn from a note appended to Sir Edward Coke's own report of the proceedings, no proclamation imposing fine and imprisonment was issued by the court. [Note 3.]

It might have been supposed, that the independent and uncompromising conduct of Sir Edward Coke on these

* 12 Rep. 74.

occasions would have precluded all chance of his promotion; and still less did it seem probable, that he should owe that promotion to the suggestion of his rival, Sir Francis Bacon. That ambitious and crafty man, who still eagerly desired to obtain the office of attorney-general, seeing that his own promotion depended on that of Sir Edward Coke, prepared a memoir under the title, "Reasons why it should be exceeding much for his majesty's service to remove the Lord Coke from the place he now holdeth, to be chief justice of England, and the attorney to succeed him, and the solicitor the attorney." Amongst the reasons offered for the change, Bacon states, "the remove of my Lord Coke to a place of less profit, though it be with his will, yet will be thought abroad a kind of discipline to him for opposing himself in the king's causes, the example whereof will contain others in more awe." He also says, that the projected change "will strengthen the king's causes greatly amongst the judges; for both my Lord Coke will think himself near a privy counsellor's place, and thereupon turn obsequious; and the attorney-general, a new man and a grave person in a judge's place, will come in well with the other, and hold him hard to it, not without emulation between them, who shall please the king best." * According to these suggestions, Coke was, on the 25th of October 1613, raised to the chief justiceship of the king's bench; and a few days afterwards was sworn in as a member of the privy council. Hobart was appointed chief justice of the common pleas; and Bacon succeeded to the vacant office of attorney-general.

Of the obsequiousness which Bacon anticipated the new chief justice betrayed no symptoms, though in the year 1615 an opportunity occurred to recover his credit in the estimation of the court. A sermon written by one Peacham was seized in his study; and being said to contain treasonable passages, it was proposed to indict the writer for treason. As a preliminary, the accused was

* Bacon's Works, vol. vii. p. 340. Montagu's ed.

examined "before torture, in torture, between torture, and after torture," but no confession was drawn from him; "his raging devil," as Bacon expressed himself in a letter to the king, "seeming to be turned into a dumb devil." It was then resolved to take the opinion of the judges of the king's bench, extrajudicially, as to the nature of the offence of which Peacham had been guilty. This delicate task was confided to Bacon, who applied all his art to win over the chief justice. Coke replied, "that such auricular taking of opinions was not according to the custom of the realm;" and intimated that his brothers, probably, would not comply with it. Of their opinion, however, Bacon felt well assured. "Nor am I," he adds in his letter to the king, "out of hope that my Lord Coke himself, when I have in some dark manner put him in doubt that he shall be left alone, will not continue singular." At length the chief justice so far complied with the requisitions of the court as to declare his opinion in writing [Note 4.]; though, from the expressions made use of by Bacon, it seems not to have been of a nature very satisfactory to the court.*

In a case which occurred in the course of the same year (1613), Sir Edward Coke has been supposed to have exhibited something like a compliance with the wishes of the court; and to have sanctioned, by his opinion, the illegal mode of taxation which was known by the name of "a benevolence." Mr. Oliver St. John, a gentleman of an ancient family, addressed a letter to the mayor of Marlborough, in which he questioned the legality of the benevolence lately set on foot. For this offence an information was exhibited against him in the star-chamber, where he was adjudged to pay a fine of 5000*l.*, and to be imprisoned during the king's pleasure. In a letter addressed by Bacon to James, giving him an account of the proceedings in the star-chamber, he says, "My lord chief justice delivered the law for the benevolence strongly; I would he had done it timely." In order to form a correct judgment with regard to the honesty of

* State Trials, vol. ii. p. 870.; and see 3 Inst. 29.

the opinion thus delivered by Coke, it is necessary shortly to examine the state of the law as to benevolences, as it existed at this time. By the statute 1 Rich. 3. c. 2. the charge or tax which was collected under this name was declared illegal. "But it appears," says Coke, "by the preamble, that this benevolence was against the will and liberty of the subject; but a free-will offering is not restrained." * He also mentions a case in the 40th Elizabeth, in which "it was resolved by all the justices and barons, that a free grant to the queen without coercion is lawful, and accordingly they granted it to the queen." † This and other authorities appear to have been collected by Sir Edward Coke, when his opinion was required in St. John's case; and they probably satisfied his mind that the proceeding, though it might not be strictly constitutional, yet was not illegal. That the court did not profess to impose it as a compulsory tax, appears from the address of Bacon to the lords of the star-chamber. "It will," he says, "appear most evidently what care was taken that that which was then done might not have the effect, no, nor the show, no, nor so much as the shadow of a tax." ‡ Coke, therefore, was bound to declare the law as it existed, and might conscientiously deliver his opinion in favour of a voluntary benevolence.

The discovery of the murder of Sir Thomas Overbury, in the year 1615, and the tracing of that dark and intricate plot to its authors, not only occupied much of the time and attention of Sir Edward Coke, but likewise placed him in a situation of great difficulty. It is impossible, within reasonable limits, to give any idea of this "grand oyer of poisoning." In the enquiry which took place previously to the trials, Sir Edward Coke examined upwards of two hundred witnesses; and, in the course of these arduous proceedings, conducted himself with a zeal and industry which even forced an encomium from Bacon. "This I will say of him, and I would say

* 12 R. p. 119. † Ibid.
‡ State Trials, vol. ii. p. 904.

as much to ages, if I should write a story, that never man's person and his place were better met in a business than my Lord Coke and my lord chief justice in the cause of Overbury." * Much of the mystery in which these infamous proceedings were enveloped has never been unravelled. From various passages of the trial, it is obvious that the chief justice was impressed with an idea that certain persons, whose names could not be breathed, were in some manner implicated in the transaction. [Note 5.] With unwearied diligence, however, he searched out and brought to punishment the actual perpetrators of the crime, though the king's favourite was included amongst them.

It was rumoured at the time that the conduct of Sir Edward Coke during these proceedings had given much displeasure to the court; and a circumstance soon afterwards happened, which increased the odium under which the chief justice laboured. The king had been informed that Sergeant Chiborne, in arguing a question in the common pleas, had maintained certain positions contrary to the royal prerogative. Sir Francis Bacon was therefore directed to inform the judges that it was his majesty's pleasure to be first consulted before they proceeded to pronounce their judgment in the cause. The attorney-general accordingly signified the royal commands to the chief justice †, who desired that each of his brethren might receive a similar intimation. Upon this the judges met, and, after a conference, resolved that it was their duty to proceed notwithstanding the royal mandate. In order to justify this resolution, they addressed a modest and respectful letter to the king, in which they stated the reasons in law, and the oath which compelled them to proceed.‡ This document was signed by all the twelve judges. James replied by a letter, in which he pronounced the alleging their oath for their non-

* State Trials, vol. ii. p. 1027. But see his Letter in the Biogr. Brit. p. 687.

† See the Letter, Bacon's Works by Montagu, vol. vii. p. 321.

‡ Biogr. Brit. art. Coke, p. 688. Bacon's Works, by Montagu, vol. vii. p. 322.

compliance a weak and impertinent pretence; and that as to the statute they mentioned, it was very improbable that any of his predecessors should be so far off their guard as to pass an act so very prejudicial to the prerogative. He concluded with reiterating his commands not to proceed. Soon afterwards the judges were summoned to the council-table. The king himself was present to administer the reproof. He reprimanded them for their remissness in permitting counsel to dispute his prerogative at the bar; telling them that it was their duty to check such intemperate sallies; that deferring their judgment, upon just and necessary reasons, was neither a denial nor delay of justice; that to say the point was a private contest between subject and subject, was wide of the case; and, lastly, that their letter was indecently couched, and failed in form. Upon the latter accusation all the judges knelt, acknowledged their error, and craved pardon. It was now that the high and independent spirit of Coke was boldly and nobly displayed. He entered at once upon his defence. He insisted that the king's command for stopping the proceedings was a delay of justice, and, by consequence, against law and the judges' oath; and that as they intended to manage the pleading, the king's prerogative should not have been concerned. To this James replied, that for them to pronounce whether his prerogative was concerned or not, without consulting him, was a preposterous management. He then required the lord chancellor to deliver his opinion, whether his commands had been against law and the oath of the judges. The chancellor, wisely excusing himself, referred the matter to the king's counsel; who, with Bacon at their head, at once declared that the royal command was no denial of justice. Coke, however, was not silenced. Indignant at the obsequious conduct of the crown lawyers, he urged that it was the duty of the king's counsel to argue before the judges, and not against them. After some further discussion, the following question was propounded by the lords of the council: "Whether, in a case where the king believed his pre-

rogative or interest concerned, and required the judges to attend him for their advice, they ought not to stay proceedings till his majesty had consulted them?" To this all the judges answered in the affirmative, excepting Sir Edward Coke, who said *that when the case happened, he would do his duty**; —an answer at once honest, bold, and discreet.

It unfortunately happened, that about this time a violent dispute occurred between Sir Edward Coke and the Lord Chancellor Ellesmere; "which," says the historian Wilson, "made a passage to both their declines." At the trial of a cause before Coke, one of the witnesses was kept back by the practice of the opposite party. "A pragmatical fellow," a friend of the party who withheld the witness, undertook to account for his non-appearance. Carrying him to a tavern, and calling for a pot of sack, he bade him drink; and leaving him drinking, went into court, where, being called to prove the incapacity of the witness to attend, he swore "that he left him in such a condition, that if he continued in it a quarter of an hour, he would be a dead man." On this evidence a verdict was obtained; but the party who had been injured by the fraud filed a bill in chancery against his adversary, who, refusing to put in his answer, was committed. Upon this the defendant petitioned the star-chamber for relief; and Coke, as it is said, mingling himself with the dispute, threatened the chancellor with a *præmunire*. † This was merely the revival of a former controversy. After a judgment in the king's bench, one Glanville had been committed for refusing to obey a decree of the court of chancery in the same matter; whereupon he applied to the court of king's bench, who held that he ought to be bailed, and bailed him accordingly. ‡ The consequence of these proceedings was a reference of the disputed jurisdiction to the king, who, after hearing the matter argued, affirmed the authority of the court of chancery.

* Biogr. Brit. art. Coke, p. 689. † Wilson in Kennet, vol. ii. p. 704.
‡ Collectanea Juridica, vol. i. p. 20.

The patience of the court was now exhausted, and it was resolved to inflict upon Sir Edward Coke the disgrace and punishment which he had incurred by his uniform opposition to the irregular and arbitrary designs of the government. On the 26th July, 1616, he was summoned before the council, when three several charges were preferred against him. The first related to some malversation while he was attorney-general; the second, to his conduct in Glanville's case, mentioned above; and the third, to his behaviour before the king, when the judges were called on to account for their proceeding, notwithstanding the royal prohibition. To these accusations Coke returned clear and distinct answers. Soon afterwards he again appeared at the council-table on his knees, when he was informed by secretary Winwood, that though a favourable report had been made to the king of the proceedings which had taken place there a few days before, his majesty was not satisfied with the explanations given. Out of his clemency, however, his majesty had been pleased not to deal heavily with him, and had decreed, 1. That he should be sequestered from the council-table until his majesty's further pleasure was known; 2. That he should forbear to ride his summer circuit as judge of assize; 3. That during the vacation, while he had time to live privately and dispose himself at home, he should take into his consideration and review his book of reports, wherein, as his majesty was informed, were many extravagant and exorbitant opinions set down and published for positive and good law. Amongst other things, the king was not well pleased with the title of those books, wherein he styled himself lord chief justice, &c., whereas he could challenge no more than lord chief justice of the king's bench. Having corrected what in his discretion he found meet in those reports, his majesty's pleasure was that he should bring the same privately to himself, that he might consider thereof as in his princely judgment should be found expedient. To this reprimand Coke replied, that he did in all humility prostrate himself to his majesty's good pleasure; that he

acknowledged the decree to be just, proceeding rather from his majesty's exceeding mercy than his justice; that he gave humble thanks to their lordships for their favours and goodness towards him, and hoped that his behaviour for the future would be such as to merit their lordships' favours.* On his thus retiring in disgrace from the council-table, the lord treasurer availed himself of the opportunity, in the quaint language of Wilson†, "to give him a wipe." He told him that he had one thing more to let him know, which belonged to the earl marshal to take notice of, which was that his coachman used to ride bareheaded before him, which was more than any ways he could assume or challenge to himself, and he required him to forbear it for the future. Coke replied, that his coachman did it for his own ease, and not by his commandment; and again making his acknowledgments, departed.

The reprimand at the council-table was followed, in the course of the same year, by Coke's removal from office. This measure was probably hastened by the desire of Villiers, who was anxious to obtain possession of a valuable office in the king's bench which Coke had promised to Somerset, and which might be obtained without difficulty from a new chief justice. On seeing the *supersedeas* which deprived him of his high judicial rank, Coke's fortitude forsook him, and he is said to have received it with tears.‡ On the 15th November, 1616, Sir Henry Montague was appointed chief justice, and the lord chancellor, in the address which it was at that time customary to deliver on such occasions, warned him not to follow the steps of his predecessor, against whom the greater part of the speech was directed. "Remember," he concluded, "the removing and putting down of your late predecessor, and *by whom*." §

Thus, by the vengeance of an arbitrary court, and the artifices of a needy favourite, was a judge of profound learning and incorruptible integrity driven from the seat

* Biogr. Brit. art. Coke, p. 691.
† In Kennet, vol. ii. p. 705.
‡ D'Israeli's James I., p. 125.
§ Moor's Rep., 828.

which he had occupied with so much honour. Though the reflections which accompanied him in his disgrace must have been most consolatory, yet to a mind like that of the late chief justice, wholly devoted to the science of his profession, a retreat from its labours must have been productive of nothing but irksomeness and disquiet. In the midst of his misfortunes his ancient adversary, Sir Francis Bacon, did not fail to take advantage of so favourable an opportunity to goad still more deeply the wounded spirit of his rival. He addressed to him an "Expostulation," for the purpose, as he informed Coke, of showing to him "his true shape in a glass." As many of these observations had, doubtless, a foundation in truth, though they may have been aggravated by the feelings of the writer, they are not to be overlooked in forming an estimate of the real character of Sir Edward Coke.

"First, therefore, behold your errors. In discourse you delight to speak too much, not to hear other men: this, some say, becomes a pleader, not a judge; for by this sometimes your affections are entangled with a love of your own arguments, though they be the weaker, and rejecting of those which, when your affections were settled, your own judgment would allow for strongest. Thus while you speak in your own element, the law, no man ordinarily equals you; but when you wander, as you often delight to do, you wander indeed, and give never such satisfaction as the curious time requires. This is not caused by any natural defect, but, first, for want of election, when you, having a large and fruitful mind, should not so much labour what to speak, as to find what to leave unspoken: rich soils are often to be weeded.

"Secondly, you cloy your auditory when you would be observed: speech must be either sweet or short.

"Thirdly, you converse with books, not men, and books especially human; and have no excellent choice with men, who are the best books; for a man of action and employment you seldom converse with, and then but

with your underlings; not freely, but as a schoolmaster with his scholars, ever to teach, never to learn; but if sometimes you would in your familiar discourse hear others, and make election of such as know what they speak, you should know many of the tales you tell to be but ordinary; and many other things which you delight to repeat and serve in for novelties, to be but stale. As in your pleadings you were wont to insult over misery, and to inveigh bitterly at the persons, which bred you many enemies, whose poison yet swelleth, and the effects now appear, so are you still wont to be a little careless in this point, to praise or disgrace upon slight grounds, and that sometimes untruly; so that your reproofs or commendations are for the most part neglected and contemned; when the censure of a judge, coming slow but sure, should be a brand to the guilty, and a crown to the virtuous. You will jest at any man in public, without respect of the person's dignity or your own: this disgraceth your gravity more than it can advance the opinion of your wit; and so do all actions which we see you do directly with a touch of vain-glory, having no respect for the true end. You make the law to lean too much to your opinion, whereby you show yourself to be a legal tyrant, striking with that weapon where you please, since you are able to turn the edge any way: for thus the wise master of the law gives warning to young students, that they should be wary, lest, while they hope to be instructed by your integrity and knowledge, they should be deceived with your skill armed with authority. Your too much love of the world is too much seen, when, having the living of a thousand, you relieve few or none: the hand that has taken so much, can it give so little? Herein you show no bowels of compassion, as if you thought all too little for yourself, or that God hath given you all that you have, if you think wealth to be his gift, I mean that you get well, for I know sure the rest is not, only to that end, you should still gather more, and never be satisfied; but try how much you would gather, to account for all at the great and general audit-day.

We desire you to amend this, and let your poor tenants in Norfolk find some comfort; where nothing of your estate is spent towards their relief, but all brought up hither to the impoverishing of your country." *

In pursuance of the royal command, Coke applied himself to the revision of his reports, and after the expiration of three months submitted *five* errors which he had discovered to his majesty; "being rather," as it is said in a paper which appears to have been drawn up by Bacon, "a scorn than a satisfaction to his majesty." † James was therefore pleased that Sir Edward's "memory should be refreshed, and that he should be put in mind of some passages dispersed in his books which his majesty did distaste;" and the attorney and solicitor general selected five points upon which the explanations of the late chief justice were desired. A warrant was issued to some of the judges to examine these errors; but the enquiry was subsequently dropped.

At length an opportunity occurred to Coke of restoring himself to the royal favour without being guilty of any compliances disgraceful to his political character. Sir John Villiers, the brother of the favourite, the Earl of Buckingham, had formerly made proposals for an alliance between himself and the youngest daughter of Sir Edward Coke. The offer had, however, been slighted; but now, by the advice of Sir Ralph Winwood, the secretary of state, who had been offended by some want of courtesy on the part of Bacon, and who therefore attached himself to the interests of his rival, Sir Edward Coke, a renewal of the negotiation for the marriage was proposed. A large portion was offered with the lady, and Buckingham approved of the alliance. At the moment when Coke was on the point of accomplishing his wishes, and securing the good offices of the favourite, a formidable obstacle presented itself.

On the death of his first wife, Coke had married the Lady Hatton, widow of Sir William Hatton, and sister to Thomas Lord Burleigh, afterwards Earl of Exeter.

* Bacon's Works by Montagu, vol. vii. p. 298. † Id. vol. vii. p. 352.

The temper of this lady was such as to afford her husband very little pleasure in their domestic intercourse; and she now opposed with violence the match which he had so greatly at heart. In order to prevent it, she carried away her daughter secretly, and lodged her in the house of Sir Edmund Withipole, near Oatlands. Coke made immediate application to the Earl of Buckingham for a warrant from the privy council to procure the restoration of his daughter, and, discovering the place of her confinement, he proceeded to Sir Edmund Withipole's house, accompanied by his sons, and carried her from thence by force. For this prompt exertion of the paternal authority, Lady Hatton preferred a complaint against her husband in the star-chamber.

In the meanwhile Bacon, who had been created lord keeper, was not idle. He saw the necessity of crushing at once the hopes which Coke had formed of a restoration to power, and he applied himself with diligence to frustrate them. In the first instance he addressed himself to Buckingham, stating the reasons against the alliance: "First, he shall marry into a disgraced house, which, in reason of state, is never held good; next, he shall marry into a troubled house of man and wife, which in religion and Christian discretion is disliked," &c. He then addressed the king, urging, in the same manner, many reasons against the match, and attributing the peaceable and submissive state of the country to "the disauctorising" of Coke, and hinting, that if he again came into power, strengthened by such an alliance, it would cause a relapse of affairs into their former state. Resolving to lose no advantage in the controversy, Bacon promoted the filing of an information against Coke in the star-chamber for his conduct in recovering his daughter; but every effort was vain against the wishes of the favourite, By the intervention of Lady Compton, the mother of Buckingham, a truce was declared between Sir Edward and his wife. The lord keeper was severely censured by the king*, the proceedings in the star-chamber were

* See James's letter, Bacon's Works by Montagu, vol. vii. p. 359.

directed to be suspended, and Coke, restored to favour, was reinstated in his place at the council-table. With that mean subserviency, which degraded a mind of the highest and noblest order, Bacon, perceiving that he could not prevent the marriage, became equally zealous in promoting it. [Note 6.] It was accordingly solemnized with much pomp at Hampton Court; but Lady Hatton, at the instance of her husband, was placed for some time under restraint. The domestic disputes between these parties were never entirely reconciled. Many letters remain to prove the bad terms on which they lived; but the history of their domestic quarrels is neither edifying nor amusing. [Note 7.] On her release, the Lady Hatton gave a magnificent entertainment in honour of the marriage of her daughter; but her husband was forbidden the feast. "The expectancy of Sir Edward's rising is much abated," says a letter-writer of the day*, "by reason of his lady's liberty; who was brought in great honour to Exeter House by my Lord of Buckingham from Sir William Craven's, whither she had been remanded, presented by his lordship to the king, received gracious usage, reconciled to her daughter by his majesty, and her house in Holborn enlightened by his presence at dinner, where there was a royal feast, and to make it more absolutely her own, express commandment given by her ladyship, that neither Sir Edward Coke, nor any of his servants, should be admitted." [Note 8.] On one occasion, upon a rumour of Sir Edward's death at his house at Stoke Pogis, Lady Hatton, accompanied by her brother, set off immediately to take possession of the place; but on their way were stopped by one of the physicians, with the disagreeable intelligence of Sir Edward's amendment.†

Notwithstanding Coke's restoration to favour, he never again received any judicial appointment; though his name was included in a great number of commissions for the management and arrangement of various public affairs.‡

* Strafford's Letters, vol. i. p. 5. † Id. vol. i. p. 265.
‡ Rymer's Fœdera, vol. xvii. Biogr. Brit. art. Coke, p. 693.

In the third parliament of James I., which assembled in 1620, Sir Edward Coke appeared as one of the representatives of Leskard, in Cornwall. His character, age, and experience, added to the ability and zeal with which he devoted himself to the service of the country, gave great weight to all the measures which he supported. He exerted himself particularly to procure the abolition of the many injurious monopolies which had been lately granted; and to bring to punishment the persons who, under colour of them, had oppressed the country. [Note 9.] In almost every debate of importance the name of Sir Edward Coke appears as a speaker, supporting on all occasions the cause of freedom and liberality. He was one of the very few persons of that age who had the capacity to perceive the injurious nature of those restrictions with which, at that period, almost every branch of trade was fettered. On a bill being brought in "for the free trade and traffic of Welsh cloths, cottons, plains, &c. in and through the kingdom of England and principality of Wales," Sir Edward Coke said, "Whereas it is alleged that for a reason of state there was a restriction on the buying of those Welsh cloths, &c.: a reason of state is often used as a trick to put a man out of the right way; for when a man can give no reason for a thing, then he flieth to a higher strain, and saith it is a reason of state. *Freedom of trade is the life of trade: and all monopolies and restrictions of trade do overthrow trade.*" * Again, in the debate on a bill to enable merchants of the staple to transport woollen cloths to Holland, &c. Coke expressed a similar sentiment; saying, "that he thought it best for the kingdom to have a liberty of trade, so it be well governed." † On another occasion we find him opposing the first project of a corn-law which was ever proposed in parliament. A bill having been brought in under the title of "A bill against the importation of corn," was opposed by Mr. Towerson, Sir Dudley Digges, and Sir Edward Coke. Sir Dudley Digges said, that if

* Proceedings and Debates, &c. vol. i. p. 308.; and see vol. ii. p. 155.
† Id. vol. ii. p. 35.

we bar the importation of corn when we have no need of it, we shall not have it imported when we want it. Sir Edward Coke said, that he never heard of any bill that was ever preferred in parliament against the importation of corn; that he loved to follow ancient precedents; that he thought the bill spoke Dutch, but that it was certainly for the benefit of the Low Countrymen.*

In the session of 1621 the commons began to show evident signs of that discontent which afterwards broke out into such serious controversies with the crown. Sir Richard Grosvenor said, "We have hitherto sung nothing but *placebo*, and danced to the king's heart; but it hath now pleased his majesty to change this tune, and to make us sing nothing but *lachrymæ*, and sing *loath to depart.*" † The subject of religion, and the sufferings of the protestant cause in Germany, roused all the sympathies of the house, and they passed a declaration in favour of supporting the palsgrave, amid waving of hats and acclamations of triumph. Scarcely had the declaration been read, ere the king adjourned the parliament. "Then Sir Edward Coke, one of the king's privy council, with tears in his eyes, standing up, said the prayer (which is in the common prayer-book) for the king and his issue; adding only to it, *and defend them from their cruel enemies.*" ‡

The activity displayed by Coke in procuring the condemnation of various monopolies irritated several of the persons who had benefited by those exactions to such a degree, that in conjunction, as it seems probable, with some other of Sir Edward's enemies, amongst whom his own wife and Bacon were found, they resolved to annoy him, by instituting proceedings against him in the star-chamber. The nature of the charges against him was various, but they chiefly related to malpractices in his official stations; and they concluded with an accusation of "ridiculous and barbarous behaviour and carriage in the place of a judge, comparing of himself, blasphemously,

* Proceedings and Debates, vol. ii. p. 87. † Id. p. 123.
‡ Id. p. 174.

to Samuel." * There is every reason to conclude that the offences with which he was charged had no existence but in the malicious imaginations of the accusers. The commons, indignant that one of their most active and respected members should be thus assailed, took the matter up with much warmth, and proceeded to animadvert on the parties who ventured to attack a member for that which had been done in the course of his parliamentary duty. † The king also, on the other hand, interested himself in "Sir Edward Coke's foolish business," as he was pleased to term it; and had not more important matters supervened, it is probable that the business, foolish as his majesty might regard it, would have caused a breach between the crown and the parliament. But the "apologetic petition," and the king's answer, occupied the attention of the house so deeply, that the matter appears to have been forgotten.

At length the misunderstanding between James and the commons attained such a height, that the king, with his own hand, erased from the Journals of the Commons the celebrated protestation or declaration of their liberties and privileges, which they had passed in anticipation of a dissolution; and, on the 6th January, 1621, published a proclamation, declaring the parliament dissolved, and animadverting with severity on those ill-tempered spirits who had compelled him thus to exercise his prerogative. But James was not contented with the bare expression of his displeasure: several leading members of the country party, amongst whom was Sir Edward Coke, were committed to the Tower. Orders were issued to seize his papers at his chambers in the Temple, and to seal up the doors: and such was the animosity of the court, that it is said to have been debated in the council whether he could not be excluded from the benefit of the general pardon. ‡ Nor was this the only persecution to which he was subjected. He

* Proceedings and Debates, vol. ii. p. 250.
† Id. vol. ii. pp. 201. 248. 254. 260. 294. 305. 314. 326. 328. 362.
‡ Parl. Hist. vol. v. p. 525.

was once more cited before the star-chamber, on a charge of concealing some examinations during the trial of the Earl of Somerset: but this proceeding appears to have been soon abandoned. He was also again dismissed from his place at the council-table; and from this time he wholly forfeited the countenance of the court.

His appointment on a commission, in the year 1623, to enquire into the church establishment of Ireland, may at first seem to show that Coke had not fallen into entire disgrace; but there is little doubt that this was, in fact, intended as an honourable banishment. During the examinations into the conspiracy to accuse Coke in the star-chamber, Lepton, one of the parties, was represented to have said, "that some of the greatest men in the kingdom were acquainted with this business; and that if the business of the star-chamber did not hit Sir Edward Coke home, that then he should be sent over a commissioner into Ireland."* Some years afterwards, when speaking of the practice of foreign employment, Coke said, "No restraint, be it ever so little, but is imprisonment; and foreign employment is a kind of honourable banishment: I myself was designed to go to Ireland; I was willing to go, and hoped, if I had gone, to have found some Mompessons there." †

At the commencement of the reign of Charles I. many of those who had watched with jealousy and distrust the events of the last reign, looked forward with better hopes to the measures of the new government. Sir Benjamin Rudyard, commending the good natural disposition of the new sovereign, his freedom from vice, his knowledge acquired by travel, and his "being bred in parliaments," moved that the "house should take such a course as might sweeten all things between the king and the people." He was followed by Sir Edward Coke, who moved that there might be no committees for grievances or courts of justice; first, in respect of the

* Proceedings and Debates, &c. 1621. vol. ii. p. 254.
† Rushworth, vol. i. p. 523.

plague; next, because this was the very beginning of the new king's reign, in which there can be no grievances as yet."* But this favourable disposition was speedily destroyed by the obvious bias of the court to those measures which, in the last reign, had been productive of so much confusion. The subject of grievances was resumed by the commons; while the crown incessantly demanded supplies. In the debates on this subject, Coke took a conspicuous part, and was one of the first who ventured to point at Buckingham as one of the great grievances of the country. "The last speaker on this side we shall mention," say the compilers of the Parliamentary History, "was old Sir Edward Coke; who began again with his leaks, and said 'That two would drown any ship. That *solum et malum consilium* was a bottomless sieve. An officer should not be *cupidus alienæ rei, parcus suæ; avarus reipublicæ; super omnia expertus. Misera servitus est ubi lex incerta aut incognita.* That in the 11th of Henry 3., Hubert de Burgh, chief justice, advised the king that *Magna Charta* was not to hold, because the king was under age when the act was made. He was Earl of Kent, but degraded for this some time after. In the 16th of Henry 3., Segrave, chief justice, was sentenced for giving sole counsel to the king against the commonwealth. That it was *malum consilium* to press more subsidies when they had given two, and to bring them thither only for 40,000*l.* Lastly, he offered to give 1000*l.* out of his own estate, rather than grant any subsidy now.'"† The advice of Sir Edward Coke prevailed; the subsidy was denied; and the king in anger dissolved the parliament.

A short time only elapsed before the king again resolved to summon a new parliament; but measures were adopted to exclude from it those who had made themselves obnoxious by opposing the supplies to the crown. Several of the most distinguished members of opposition were accordingly appointed sheriffs, in order that they

* Parl. Hist. vol. vi. p. 351. † Id. p. 401.

might be prevented from being returned as knights of the shire. Sir Edward Coke was nominated sheriff of Buckinghamshire. In order to escape the burden thus imposed upon him, Sir Edward made various exceptions to the sheriff's oath; all of which exceptions but one were overruled, and in that one particular the oath was reformed.* Notwithstanding his appointment to be sheriff of Bucks, Coke was returned as knight of the shire for Norfolk; upon which the king sent a message to the commons, desiring them to issue a new writ for the latter county. The matter was referred to a committee of privileges and elections, who, without giving an opinion on the eligibility of Coke, desired that a search might be made for precedents. In the meantime, Sir Edward did not take his seat; though it appears that no new member was returned for Norfolk; as on the day before the dissolution of the parliament, it was resolved "That Sir Edward Coke, standing *de facto* returned a member of this house, shall have privilege against a suit in chancery, commenced against him by the Lady Clare."†

In the third parliament of Charles I., which assembled in March 1627, O. S., Sir Edward Coke, being no longer disabled by his shrievalty, appeared as one of the representatives for Buckinghamshire. The commons immediately recurred to the subject of grievances; amongst which, the levying of taxes, by the authority of the king alone, under the name of loans, occupied a conspicuous station. The following is the speech delivered by Coke on this occasion:—

"*Dum tempus habemus bonum operemur.* I am absolutely for giving supply to his majesty; yet with some caution. To tell you of foreign dangers and inbred evils, I will not do it.

"The state is inclining to a consumption, yet not incurable; I fear not foreign enemies; God send us peace at home. For this disease I will propound remedies: I will seek nothing out of my own head, but from my heart, and out of acts of parliament. I am not able to

* Kennett, vol. iii. p. 13. † Parl. Hist. vol. vi. p. 125.

fly at all grievances, but only at loans. Let us not flatter ourselves. Who will give subsidies, if the king may impose what he will? and if, after parliament, the king may enhance what he pleaseth? I know the king will not do it. I know he is a religious king, free from personal vices; but he deals with other men's hands, and sees with other men's eyes. Will any give a subsidy, if they are to be taxed after parliament at pleasure? The king cannot lawfully tax any by way of loans. I differ from them who would have this of loans go amongst grievances; for I would have it go alone.

"I'll begin with a noble record; it cheers me to think of it,—26 Edw. III. It is worthy to be written in letters of gold. Loans against the will of the subject are against reason, and the franchises of the land; and they desire restitution. What a word is that franchise? The lord may tax his villein high or low; but it is against the franchises of the land for freemen to be taxed but by their consent in parliament. Franchise is a French word, and in Latin it is *libertas*. In *Magna Charta* it is provided, that *Nullus liber homo capiatur, vel imprisonetur, aut dissesisetur de libero tenemento suo, &c. nisi per legale judicium parium suorum, vel per legem terræ*. This charter hath been confirmed by sundry good kings above thirty times."*

At length the commons resolved to frame a bill which should include a remedy for the various grievances under which the nation was suffering; and, with the assistance of Sir Edward Coke, the famous petition of rights was framed. Various conferences took place on the subject of this bill between the lords and the commons; in which Coke argued strenuously in support of the petition. After vainly endeavouring to elude it, Charles gave his assent to the bill in the usual form. The joy of the commons at this event is said to have been "unspeakable;" but it was expressed to the king in a manner more satisfactory. A bill was passed, granting five subsidies to the crown; and it was carried up to the

* Parl. Hist. vol. vii. p. 371.

lords by Sir Edward Coke, almost the whole house attending him.*

Shortly before the passing of this bill the commons had fallen with great violence upon Buckingham; and, notwithstanding the speaker's injunction that they should not proceed with that subject, Sir Edward Coke openly denounced the favourite as the cause of all their misfortunes. A singular picture of this debate has been preserved in a contemporary letter, which proves the earnest feelings with which the popular speakers of that day were affected. "Then Sir Robert Philips spake, and mingled his words with weeping. Mr. Prynne did the like; and Sir Edward Coke, overcome with passion, seeing the desolation likely to ensue, was forced to sit down, when he began to speak, through the abundance of tears." "The naming of the duke," says the same writer, "was entertained and answered with a cheerful acclamation of the house, as when one good hound recovers the scent, the rest come in with a full cry." †

The latest service rendered by Sir Edward Coke to his country is said to have been the managing of a conference with the lords respecting the issuing of a commission of excise, for the raising of money by imposition. ‡

At the dissolution of parliament, which took place in March 1628, O.S., Sir Edward Coke, weighed down with the burden of years, retired from public life to his seat at Stoke Pogis, where he continued to reside till the period of his death. That event took place on the 3d of September 1634. He died repeating the words, "Thy kingdom come, thy will be done." He was buried at Titeshall church, in Norfolk.

A short time before his death, Sir Francis Windebank, under the authority of an order from the privy-council, came to search his house for treasonable and seditious papers. Many manuscripts of value were on this occasion carried away; amongst which were the First and Second Institutes, the Eleventh and Twelfth

* Parl. Hist. vol. viii. p. 203. † Rushworth, vol. i. p. 609.
‡ Id. p. 614, 615.

Reports, and upwards of fifty other manuscripts, together with his last will. Some years afterwards, on the petition of one of Sir Edward's sons, such of the manuscripts as could be found were returned to his family, but the will was never recovered.*

By his first wife, Sir Edward Coke had seven sons and three daughters; by his second wife, two daughters. The alliances and descents of the family are traced in the Biographia Britannica. Henry, the fifth son of Edward, left a son, Robert Coke, who married the Lady Anne Osborne, daughter of the Duke of Leeds, by whom he had an only son, Edward Coke. Edward Coke married Carey, the daughter of Sir John Newton, of Gloucestershire, by whom he had several children, the eldest of whom, Thomas Coke, was afterwards created Baron Lovell and Earl of Leicester. Anne, the youngest daughter of this Edward Coke, married Philip Roberts, Esq., a major in the second troop of life-guards, from whom the present Mr. Coke is lineally descended.

The personal appearance of Sir Edward Coke is said to have been prepossessing; a representation which the portraits remaining of him confirm. His features were regular, and their expression engaging. His frame was vigorous and well proportioned; his air and manner grave and full of dignity. In his habits of life he was temperate, laborious, and exact; neat in his dress, and studious of the cleanliness of his person. It was a common saying of his, "That the cleanliness of a man's clothes ought to put him in mind of keeping all clean within."† It was his custom to "measure out his time at regular hours," retiring to rest at nine o'clock, and rising at three in the morning.‡

In estimating the political character of Sir Edward Coke, it is very necessary to consider it with relation to the times in which he lived, and the station in life which he filled. The king had not yet abandoned any of those

* Roger Coke's Detection, sub anno 1634.
† Biog. Brit. art. Coke, p. 679.
‡ Roger Coke's Detection, ed. 1696. p. 49.

high pretensions, which had been so imperiously advanced by the Tudor princes; and the people had not learned to regard with indifference the frowns of the sovereign. The favour of the court was still all-sufficient, not merely to dignify, but also to enrich the fortunate object of it; and to be excluded from the rays of that favour was destructive, not merely to the pride, but often to the prosperity, of the offender. To a disgraced courtier the popular cause had few attractions to offer. The country party did not yet occupy such a station as to render their service either very profitable or very honourable in the eyes of the nation at large. To one who held a judicial office under the crown the motives to a subservient policy were still stronger. The judges had been long regarded as in some degree bound, by virtue of their office of royal counsellors, to justify the acts of the crown. They held their offices merely during the king's pleasure, which they had in but too many instances been in the habit of scrupulously regarding. To preserve the character free from stain in such times, and under such circumstances, required not merely integrity of heart and honesty of purpose, but a mind of singular resolution and constancy.

A writer *, who seldom makes an assertion without a competent authority to sustain it, in reviewing the character of Sir Edward Coke, has termed him "a flatterer and tool of the court till he obtained his ends." It is very difficult to say, upon what particular actions of Coke's life this censure is grounded. Until he was raised to the bench it does not appear that he took any part in politics; for the asperity and violence with which he conducted the charges against Essex and Raleigh cannot be properly referred to any political feeling. They doubtless arose from the exuberance of professional and official zeal, heightened by the uncontrollable vehemence of a temper never well regulated. While he filled the office of attorney-general, we find no instances of undue compliance with the wishes of the court; no dishonourable

* Hallam's Const. Hist. vol. i. p. 360. 4to.

attempts to advance the prerogative at the expense of the liberties of the people. The very temper and disposition of Coke refute the idea of his having ever acted the flatterer or the tool. Had he, indeed, possessed the capacity of thus shaping his conduct according to the necessities of his fortunes, he would scarcely have evinced that unbending opposition to the court, which he must have known would ultimately lead to his disgrace. His conduct through a long course of years, and in situations of the most critical difficulty, was obviously guided by a strong overruling principle of integrity. Maturity of years seldom adds to honesty of purpose; and it is not probable that he, who in his youth was the flatterer and the tool, should in his manhood and in his decline be the firm and constant patriot. Of Sir Edward Coke's conduct, while on the bench, in resisting the aggressions of the court, it is difficult to speak in terms of adequate praise. Exposed to the arts and dissimulations of the most subtle man of his age, to the frowns of the king, and to the ill-offices both of the courtiers and of the clergy, he still persisted in vindicating the laws against every attempt to overthrow them. Even when abandoned by the whole body of his brethren, who meanly and tamely submitted themselves to the court, Coke did not hesitate singly and alone to persist in justifying the rectitude of his conduct, and exhibited a stubbornness of virtue, which, in those times of lax political morality, was as honourable as it was singular. To him was the nation very principally indebted for that high and independent tone in the debates of parliament which elevated the character of the commons, and enabled them to struggle so successfully against the arm of prerogative.

In his judicial character, Sir Edward Coke was scarcely less deserving of commendation. At a period when corruption was so much more common than it has been in later times, that the stain which it impressed upon the character was of a lighter dye, his reputation for judicial purity and integrity was blameless. The violence of

temper which distinguished and disgraced him at the bar seems to have been softened down in his maturer years; and we find no instance, while he sat on the bench, of grossness or intemperance of language, or of any want of courtesy either to the suitors or the practisers in his court [Note 10.] As a lawyer, Coke has, perhaps, never been equalled in the copious extent and variety of his information. No legal question could arise which he was unable to illustrate out of the superabundant stores of his learning. His mind, naturally fertile, was cultivated with unceasing care and diligence. In reporting the arguments of counsel, and the judgments of the court, which were at that time remarkable for their learning and fulness, he has frequently added, from the inexhaustible sources of his own information, a mass of legal matter, which has now become equally valuable with the decisions themselves. The chief fault of his powerful intellect appears to have been the absence of that admirable faculty of distribution and arrangement, which, like discipline in an army, gives irresistible power to those forces, which without it would be oppressed and rendered useless by their very extent. The mind of Coke had also suffered from its devotion to the logic of his profession. In his reverence for legal principles and legal maxims, he sometimes forgot the higher dictates of reason and good sense. As an antiquarian lawyer, he was not deeply learned, and was surpassed by Selden, and, perhaps, by Hale. Yet even with these defects he stood the acknowledged and unrivalled head of his profession, at a period fruitful in eminent men, and when the ambition of Bacon led him to devote his high genius to the same pursuits.

It will not, perhaps, be altogether useless to compare the characters and fortunes of these two celebrated men. With powers of mind which have probably never been equalled; with philosophy to unravel the errors of ages, and to link with the highest of human sciences his own immortal name; with an intellect so subtle and searching, as not only to traverse the world of matter, but to pierce into the unexplored realms of mind; with sagacity to read,

and with ingenuity to govern, the characters of others; with a bland and copious tongue; and with an obedient and powerful pen; above all, with the richest of human gifts, the capacity of taking the most enlarged views of man's true happiness: with all these countless blessings showered lavishly upon him, Bacon has left a name which, in despite of its immortality, every honest and honourable man would scorn to bear; a name debased by the most mean and groveling ambition, by thorough want of principle, and by the profligate abandonment of high and honourable feeling. Nor did he fail to reap his due reward in the insolence and ingratitude of those whom he had helped to raise and to flatter, and in the contempt of all to whom such debasement was odious.

Far inferior in intellectual capacity, with none of the science, and with little of the literature of Bacon [Note 11.], Sir Edward Coke, in all the essentials of a truly noble character, was immeasurably his superior. Unimpeached in his integrity, consistent, honest, and firm in his political principles, he exhibited an admirable example of the most difficult of all virtues — virtue in public life. The dignified self-respect with which he conducted himself in his contests with the court, forms a striking contrast to the abject submission of Bacon, whenever he discovered that he had offended the king or his favourite. Nor is the conclusion of the lives of these great men less instructive. They had both been dismissed from their high stations; they had both been disgraced at court: but Coke retired with the enlivening consciousness of his honest and honourable life; Bacon, "with wasted spirits and an oppressed mind," and with bitter reflections on his shattered fortunes.

The most celebrated of the works of Sir Edward Coke is the Comment on Littleton; a wonderful monument of the extraordinary extent and profundity of his learning, and of which it has been observed by the most competent judge, that "Neither England nor the continent can produce any contemporaneous work of equal or even ap-

proximating merit."* It may be regarded as a complete *corpus* of our elder jurisprudence, and as such will never cease to be diligently studied by all who are desirous of forming an intimate acquaintance with the principles of the common law.

The very copious and valuable collection of reports which were prepared and published by Sir Edward Coke are unequalled in that branch of legal literature. In Calvin's case† he has stated the method which he used in reporting, from which we may understand the nature of the labour to which he subjected himself. "And now that I have taken upon me to make a report of their arguments, I ought to do the same as fully, truly, and sincerely as possibly I can; howbeit, seeing that almost every judge had, in the course of his argument, a particular method, and I must only hold myself to one, I shall give no just offence to any if I challenge that which of right is due to every reporter, that is, to reduce the sum and effect of all to such a method as, upon consideration had of all the arguments, the reporter himself thinketh to be fittest and clearest for the right understanding of the true reasons and causes of the judgment and resolution of the case in question." Of the reports, Bacon himself has left the following opinion: "To give every man his due, had it not been for Sir Edward Coke's reports, which, though they have many errors, and some peremptory and extrajudicial resolutions more than are warranted, yet they contain infinite good decisions and rulings over of cases; the law by this time had been like a ship without ballast, for that the cases of modern experience are fled from those that are adjudged and ruled in former time." It may be observed, that the 12th and 13th Reports were not published until after the chief justice's death; but that these are genuine there cannot be the least doubt. They contain the numerous political cases in which Coke was engaged or consulted; and are invaluable, not merely to the constitutional lawyer, but to the historian. The

* Butler's Reminis., vol. i. p. 115. † 8 Rep. 4. a.

publication of these cases was, in all probability, forbidden by the king.*

The remaining works of Sir Edward Coke consist of the Second Institute, containing commentaries on various ancient statutes; the Third Institute, on Criminal Law; the Fourth Institute, on the Jurisdiction of Courts; a volume of Entries, or Forms of Pleading, and three tracts; on Bail and Mainprize; The complete Copyholder; and a Reading on Fines, which were published in one volume by Serjeant Hawkins in 1764.

Sir Edward Coke may be considered as the founder of the invaluable library of MSS. at Holkham. A number of those manuscripts bear his autograph name, and several volumes appear to be wholly written by his own hand. There are eight copies in MS. of the Registrum brevium, several volumes of the Statutes, and some treatises which do not appear to have been published.

JOHN SELDEN.

1584—1654.

In the very first rank of our antiquarian lawyers stands the name of John Selden. The profundity of his learning, and the extent of his researches, render a critical examination of his writings, or even a familiar acquaintance with them, a task which few persons have either the power or the resolution to undertake. The following pages will be confined to an attempt to trace the principal incidents of the life of this learned and celebrated person. [Note 12.]

John Selden was born on the 16th December, 1584, at Salvington, near Tering, in Sussex. His father was a person of inconsiderable rank; his mother a member of the knightly family of Baker, in Kent. He received his early education at the free-school of Chichester; and at the age of fourteen was admitted of Hart-hall, in the

* See Thomlinson's case, 12 Rep. 104.

university of Oxford. With regard to the course of his early studies little is known. At the age of eighteen he became a resident in London and a member of Clifford's Inn, it being customary at that time for students at law to enter themselves at one of the minor inns of court before they became members of the greater societies. In May, 1604, he was admitted of the Inner Temple, and in due time was called to the bar. His practice in court was very inconsiderable. "He seldom or never," says Wood, "appeared at the bar; but sometimes gave chamber counsel, and was good at conveyancing." The leisure which he derived from this mode of life was devoted to subjects more congenial to his taste than the practical details of his profession. Having formed an acquaintance with Spelman, Cotton, and Camden, he was led at an early period to the study of our national antiquities; and before he had attained the age of twenty-three, he had compiled a volume of collections on the early history of England, under the title of *Analecton Anglo-Britannicon libri duo*. This work was, several years afterwards, printed at Frankfort, in a very incorrect manner; and though it has been censured by Bishop Nicholson, it was regarded by its author, at a more mature age, as a performance not discreditable to his youth. Pursuing the same line of study, Selden, in 1610, published two tracts relative to early English history, under the title of *England's Epinomis*, and *Jani Anglorum facies altera*. In the same year he gave to the world a short but learned piece, entitled the *Duello, or single combat;* in which he investigates the origin and method of the judicial combat, as practised amongst our Norman ancestors. The reputation which Selden had acquired by these smaller essays of his learning and industry, was greatly enhanced by the publication, in 1614, of a work in which he displayed his profound acquaintance with the antiquities both of his own and other nations. In this treatise on *Titles of Honour* [Note 13.], a mass of legal and constitutional learning is accumulated, which renders it one of the most valuable works in the English historical library. A second edition,

with large additions, was printed in 1631; and a third edition appeared in 1672.

For several years Selden did not appear again before the public; but in 1616 he edited the treatise of Sir John Fortescue, *De laudibus legum Angliæ*, together with the *Summæ* of Hengham, to both of which he subjoined numerous notes. In the same year, also, he addressed to Sir Francis Bacon, who had just obtained the great seal, his *Brief Discourse* touching the office of lord chancellor of England. In the following year he communicated to Purchas, who was then publishing his "Pilgrimage," a short tract "*Of the Jews, sometimes living in England.*"

It will be observed, that in the foregoing works Selden had confined himself to the illustration of the laws and antiquities of his own country; but in the year 1617 he appeared in the new character of a biblical scholar and antiquarian. In that year was published his celebrated work, *De Diis Syriis syntagmata duo;* in which he treated of the false deities mentioned in the Old Testament, and of the nature of the Syrian idolatry in general. This learned performance made the name of Selden generally known to the scholars of the continent; and, in 1627, it was reprinted by the Elzevirs, under the superintendence of De Dieu, one of the professors in the Walloon college at Leyden, and of Daniel Heinsius, to whom the author dedicated the edition. Such was the reputation which this work gained abroad, that in 1662, and in 1680, it was again reprinted at Leipsic.

As yet the labours of Selden had served but to contribute to his honour and fame: but his next publication was productive of different consequences. In the year 1618 he gave to the public his *History of Tithes;* in which he traced, with great learning and ingenuity, the rise and progress of that ecclesiastical payment, so as to overthrow the theory of those zealous churchmen who contended for the divine right of tithes. It was not to be expected that, at a period when the church of England exercised so triumphant a sway, a work tending to subvert the divine title of her ministers to their temporalities

would be suffered to appear without incurring every censure, ecclesiastical and temporal, which it was in the power of the church and her sons to inflict. Indignant at the learned outrage of which Selden had been guilty, the head of the church resolved to vindicate the rights of his servants. Accordingly, in December 1618, Selden was summoned to appear before the king at his palace of Theobalds. The guilty scholar was introduced by his friends Ben Jonson and Edward Heyward, and the royal theologian was pleased to point out to him the obnoxious passages in his work. A kingly critic is seldom mistaken; and Selden submissively promised to write an explanation of the passages to which his majesty had objected. Not content with this retractation, the churchmen, in the following month, summoned Selden before the court of high commission, when the unfortunate scholar was compelled to subscribe the following ignominious declaration:

"My good lords, I most humbly acknowledge the error I have committed in publishing the *History of Tithes;* and especially in that I have at all, by showing any interpretation of Holy Scriptures, by meddling with councils, fathers, or canons, or by what else soever occurs in it, offered any occasion of argument against any right of maintenance, *jure divino,* of the ministers of the gospel: beseeching your lordships to receive this ingenuous and humble acknowledgment, together with the unfeigned protestation of my grief, for that through it I have so incurred both his majesty's and your lordships' displeasure, conceived against me on behalf of the church of England. JOHN SELDEN."

That Selden displayed upon this occasion a want of that high moral courage which is one of the first and noblest qualities of a good citizen must be admitted; but the nerves of the martyr and of the patriot are not found in every frame: nor can it justly be made the subject of peculiar reproach, that the learning of Selden was not accompanied by the courage of Hampden. The studious habits of the scholar were but too well calculated to engender that "indulgence to his safety," of which Cla-

rendon speaks as one of the characteristics of Selden's disposition; and it has been well and justly remarked, that this error, "proceeding from natural timidity, and operating only defensively, is much less culpable in a moral estimate, than that spontaneous assumption of unreal sentiments and opinions which we see too often practised for profit or advancement." * Still it must be confessed, that it is impossible to view the character of Selden with that deep respect and fervent admiration with which we regard those resolute and high-minded men, whom no threats can prevail upon to retract, where they are conscious of having acted rightly.

Not content with employing the royal influence and the strong arm of the high commissioners to silence the unfortunate Selden, his antagonists resolved also to attack him with his own weapons; and accordingly numerous answers were poured out by the exasperated champions of the church. But to every answer there might be a reply; and Selden was not a man who would willingly decline a controversy. To prevent so dangerous a warfare, in which it was probable that the doctrine of divine right, as applied to temporal matters, would be treated with no gentle hand, the king interposed his royal authority; and, sending for Selden, sternly forbade him to make any reply to the refutation which Mountagu, one of the state chaplains, was about to publish of the *History of Tithes*. "If you, or any of your friends," said his majesty, "shall write against this confutation, I will throw you into prison!" In answer to this cogent and conclusive argument Selden had nothing to offer, and contented himself with circulating amongst his friends some observations upon the works of his critics.

The anger of the king had been so greatly excited by this attack upon the privileges of his clergy, that Selden, who had not yet learned to withstand the frowns of royalty, found it necessary to propitiate his majesty by a recantation of certain opinions, in which it had been his misfortune to differ from him. Pursuant to the royal plea-

* Aikin's Life of Selden, p. 37.

sure, he therefore published three tracts, "*Of the Number 666 in the Revelations;*" "*Of Calvin's Judgment on the Book of Revelations;*" and "*Of the Birth-day of our Saviour;*" upon all of which subjects he had the discretion to perceive the error of his former opinions. In the mystic number he found new and more recondite meanings; in the Judgment of Calvin he no longer discovered the good sense and the modesty which had formerly distinguished it; and in Christmas-day he saw the actual return of the anniversary which he had formerly had the temerity to doubt. It is a painful spectacle to see learning and genius thus made the tools of oppression and terror.

But the period was now fast approaching when Selden was about to act a more noble and manly part. An important change in the state of society, and in the general condition of the people, had taken place, which at this time was beginning to render itself visible in the transactions between the crown and the parliament. In the year 1621 the commons assumed a tone, to which, however unpleasant it might sound in the royal ears, their constitutional station in the country entitled them. They complained in bold and decided terms of the grievances under which the nation laboured; and, notwithstanding the strong expression of the royal displeasure, they persisted in exercising this their great constitutional privilege. At length the king, moved to anger by the patriotic obstinacy of the commons, ventured to threaten them in language unbecoming the sovereign of a limited monarchy, asserting, that all their privileges were derived from himself and his ancestors, and hinting that their very existence depended upon his pleasure. Indignant at this assumption of absolute power, the house immediately took measures to vindicate their rights; and, in the course of the enquiries instituted with regard to the nature and extent of their privileges, they consulted Selden, though not at that time a member of the house, who entered into a long and learned dissertation on the subject, in which he took occasion to enlarge upon some

of the more prominent grievances of the times. In pursuance of the advice thus given, the house resolved to resist the aggressions of the prerogative; but such was the indignation of the court at these proceedings, that Seld n, together with Sir Edward Sandys, a very active member of the country party, was committed to the custody of the sheriffs of London. His imprisonment, however, was far from being rigorous; and, after a few weeks' confinement, he was set at liberty. It appears that his release was procured at the intercession of Bishop Williams, who represented his case favourably to the Marquis of Buckingham. *

About this period Selden composed, by the order of the house of lords, a tract entitled *The Privilege of the Baronage*, first printed in the year 1642; and about the same time he wrote the tract on *The Judicature of Parliament;* a work of inferior reputation, and by some persons supposed to have been composed by Sir Simon D'Ewes. It was not printed until the year 1681. In the year 1623, Selden edited the historical work of *Eadmer*, an early chronicler, and appended to it a number of learned notes.

In the same year, Selden entered for the first time into public life, and in the parliament which was summoned in February, 1623-4, appeared as one of the representatives for the borough of Lancaster, and in the parliament which assembled after the death of James I. he was returned for Great Bedwin. In both of these assemblies Selden ranged himself on the popular side, and conducted himself with a courage and decision which could scarcely have been expected from a man who had yielded without a struggle to the frowns of James I. But the hearts even of the weak and timid are animated into resolution and bravery by the presence and example of the resolute and the brave; and in the society of Coke and Hollis and Ellyot, Selden ventured to act the part of an intrepid man and good citizen. The

* See the Appendix to the Proceedings and Debates of the Commons in 1620, vol. ii.

details of his conduct connected with the proceedings of parliament are matter of history, and do not require repetition in this place. It is sufficient to state, that in all the great constitutional debates of that stormy period he took an active and prominent part, and that he does not appear on any occasion to have shrunk from the performance of his weighty and dangerous duty. [Note 14.] On the dissolution of the parliament in 1628, Selden reaped the fruits of his patriotic exertions, and in company with Hollis, Ellyot, Stroud, and other eminent members of the commons, was committed under warrants from the council and the king to the Tower.

The history of the imprisoned members is well known. After a long, and for some time a very rigorous confinement, they were brought before the king's bench to be bailed, when the question of the legality of their imprisonment was raised, and decided against them by a suborned bench. Upon a second application to the court, the judges, who had, without doubt, received their instructions from the court, offered to admit them to bail provided they gave sureties in large sums for their future good behaviour. This proffer being rejected, the prisoners were remanded, and a similar proposal made soon afterwards met with a similar fate.* Upon this occasion Selden was instructed to speak for the rest; and on the refusal to find sureties, all the prisoners were remanded. At length various circumstances concurred to induce the court to relax its severity, and Selden, on application, was transferred by *habeas corpus* to the Marshalsea, and subsequently to the Gatehouse, where he was detained until May, 1630, in a confinement little more than nominal, being even permitted to visit his friend the Earl of Kent at his country seat. On these circumstances coming to the knowledge of the judges, and there being an irregularity in his removal to the Gatehouse, he was remanded to his former custody in the Marshalsea; but ultimately, at the intercession of several noblemen

* State Trials, vol. iii. pp. 235. 264.

who were desirous of availing themselves of his great professional services, he was released upon bail.

It is probable that the atmosphere of the Tower and of the Marshalsea produced a considerable effect on the political constitution of Selden, for on his liberation he seems to have recurred with zeal to the more tranquil pursuits of the scholar. Even during the active engagements of his parliamentary life he had not altogether lost sight of the studies so congenial to his disposition; and besides the composition of two short tracts, *Of the Original of Ecclesiastical Jurisdiction of Testaments,* and *Of the Disposition or Administration of Intestates' Goods,* he had added greatly to his literary reputation by the publication of his history of the Arundel Marbles, under the title of *Marmora Arundelliana, sive saxa Græca incisa* [Note 15.], a work which excited great interest both amongst the scholars of England and of the Continent. During his confinement in the Marshalsea, Selden had employed himself upon a work of Hebrew antiquities, which in 1631 was published under the title of *De Successionibus in bona defuncti ad leges Ebræorum,* and of which a second edition was published in 1636, with a treatise *De Successione in pontificatum Ebræorum.* Both of these treatises were dedicated to Archbishop Laud; a circumstance from which we may infer that the fervour of the author's political feelings had suffered some abatement. These learned performances were re-edited at Leyden in 1638, with additions by the author, and again at Frankfort in 1673.

In the year 1636 appeared the *Mare Clausum,* one of the most celebrated of the many learned works which Selden produced. It is probable that it was originally intended as an answer to the *Mare Liberum* of Grotius; but it is in fact a full history and exposition of the right claimed by the English to the sovereignty of the seas. This work had been composed many years, and so early as the year 1618 it was submitted, in MS., to James I. On the occurrence of the disputes with the Dutch in 1635, the treatise attracted the attention of Charles I.,

by whose order it was committed to the press. It was dedicated to the king; and such was the satisfaction with which the work was regarded at court, that copies of it were ordered to be preserved in the council-chest, in the court of exchequer, and in the court of admiralty. In 1652 the *Mare Clausum* was translated into English by Marchmont Needham, and another translation appeared by J. H., probably James Howell, which is said by Mr. Butler to be the better version. *

On the assembling of the long parliament in 1640 Selden again appeared in public life, as one of the representatives of the university of Oxford. From the circumstance of his having been returned by that learned body, it is probable, that, notwithstanding the course which he had adopted when he formerly sat in the commons, he was considered upon the whole as not disaffected to the royal cause. However, during the stormy period which preceded the breaking forth of the civil war, Selden does not appear to have swerved from the line of conduct which he had on former occasions pursued. He sat and acted on the committee for enquiring into the arbitrary proceedings of the earl marshal's court, and on the committee for preparing the remonstrance on the state of the nation. He was joined in all the proceedings preparatory to the impeachment of the Earl of Strafford, though his name does not appear as one of the members appointed to manage the evidence at the trial; and as he opposed the mode of proceeding against that nobleman by a bill of attainder †, he was ranked at this time by the populace as one of the "enemies of justice." He was on the committee appointed to examine into the unconstitutional decision of the court of exchequer-chamber on the subject of ship-money; but when the question of the abolition of episcopacy was brought before the house, he ranked himself amongst the friends of the church of England. In the year 1641 Selden was appointed, probably in violation of his private feelings, a member of the committee to prepare articles of impeachment against Archbishop Laud.

* Notes to Coke's Litt. 261. a. † State Trials, vol. iii. p. 1469.

The part which Selden had taken in the argument for the abolition of episcopacy, to which his education and principles inclined him, had doubtless the effect of creating a favourable disposition towards him on the part of the court, insomuch that, upon the displacing of Littleton, who held the great seal, a serious design was entertained of conferring it upon Selden. It does not appear that the offer was actually made, since Lord Falkland and Sir Edward Hyde persuaded the king, that it would be in vain. Clarendon tells us, that "the Lord Falkland and himself, to whom his majesty referred the consideration of a proper person for it (the custody of the seal), did not doubt of Mr. Selden's affection for the king; but withal they knew him so well, that they concluded he would absolutely refuse the place if it were offered to him. He was in years, and of a tender constitution; he had for many years enjoyed his ease which he loved; he was rich, and would not have made a journey to York, or have lain out of his bed, for any preferment, which he had never affected." * However Selden may have been led by the timidity of his nature to make terms with power, it is obvious, from the opinion thus expressed by one who knew him well, that he was not esteemed to be a man who could be induced, by the prospect of honours and preferment, to abandon even his ease, much less his integrity.

The affairs of the kingdom were now fast tending to a crisis; and Selden, with the more moderate men of both parties, witnessed with dismay the approaching appeal to arms. On the one hand, the parliament appointed their lieutenants in the different counties; while, on the other, the king issued his commissions of array. Against the latter proceeding, as a dangerous and unconstitutional measure, Selden spoke with much earnestness in his place in parliament; and such was the respect with which his opinion was universally regarded, that his speech had a decided influence upon the manner in which the measure was received by the country at large.

* Clarendon, Hist. Rebell., vol. ii. p. 497. ed. 1826.

The king was much disturbed with the violent opposition which the commissions of array met with from one whom he had been taught to regard as not altogether adverse to his cause; and with the royal permission Lord Falkland addressed to Selden a letter, in which he enquired into the grounds of such a determined opposition. Selden replied by recapitulating shortly the arguments which he had made use of in the house, and added a similar opinion against the legality of the ordinance of parliament for the appointment of lieutenants.* That opinion he took occasion to express in his place; but the assembly that had listened so willingly to the learned arguments against the measures of the court paid little regard to the same authorities when urged against their own irregular courses.

The moderate part taken by Selden on this and other occasions appears to have excited the suspicions of the more violent portion of the parliamentary party, for, in the year 1643, on the discovery of Waller's plot, that person was interrogated by the house as to the supposed participation of Selden, Whitelocke, and Pierpoint in the conspiracy. This he strenuously denied, saying, "that he did come one evening to Selden's study, where Pierpoint and Whitelocke then were with Selden, on purpose to impart it to them all; and speaking of such a thing in general terms, these gentlemen did so inveigh against any such thing, as treachery and baseness, and that which might be the occasion of shedding much blood, that he durst not, for the respect he had for Selden and the rest, communicate any of the particulars to them, but was almost disheartened himself to proceed in it."† With this explanation the house were satisfied. In common with the other members who adhered to the party of the parliament, Selden subscribed the solemn league and covenant in 1644. A few months previous to this, the office of keeper of the records in the Tower had been conferred upon him by a vote of the house.

* Hist. of Rebell., vol. iii. p. 91. ed. 1826.
† Whitelocke's Mem., p. 66.

Amid all the disturbance of civil broils Selden did not neglect his literary pursuits. In 1640 appeared one of his most learned productions, entitled *De jure naturali et gentium, juxta disciplinam Ebræorum, libri septem,* containing a full discourse on the civil and religious polity of the Jews. In 1642 he published a version into Latin of a tract of the Patriarch Eutychius in the Arabic language, illustrating certain controverted points in ecclesiastical antiquities. This work was reprinted in 1656, under the superintendence of the learned Pococke, at the expense of Selden. In the year 1644 appeared a new work by this indefatigable scholar, *De anno civili veteris ecclesiæ, seu reipublicæ Judaicæ dissertatio;* which, in 1646, was followed by his *Uxor Hebraica, seu de nuptiis et divortiis, ex jure civili, id est, divino et Talmudico, veterum Ebræorum, libri tres.* In the following year he resumed the study of English antiquities, and employed himself upon an edition of *Fleta,* to which he prefixed a learned dissertation. In 1650 he sent to the press his great work, *De Synedris et præfecturis Juridicis veterum Hebræorum;* which, with the *Vindiciæ Maris clausi,* published in 1653, closes the long catalogue of his literary labours. In the latter work may be found much information relative to the biography of the author.

When the party to which Selden had principally attached himself rose into power, he made use of this circumstance for the protection, on various occasions, of the interests of literature. In particular, he exerted himself in favour of the university of Oxford, where he had received his education, sheltering it from the attacks of the more zealous members of his party. He extended the same fostering care to the university of Cambridge; and, in 1645, had the honour conferred upon him of being unanimously elected master of Trinity-hall, an office which he thought proper to decline.

At length, in the year 1654, the constitution of Selden began to give way, and a frame never remarkably robust yielded to the pressure of age and infirmities. Conscious

of the change which was approaching, he summoned to his side his friends, the primate Usher and Dr. Langbaine, to whom he expressed his confidence in the consolations of religion. He said, "that he had his study full of books and papers of most subjects in the world; yet at that time he could not recollect any passage wherein he could rest his soul, save out of the Holy Scriptures, wherein the most remarkable passage that lay most upon his spirit was *Titus* ii. 11, 12, 13, 14." Soon afterwards he sent for his friend Whitelocke, to advise with him on the subject of his temporal affairs, but was prevented from entering into them by increasing debility. He died (unmarried) on the last day of November, 1654, and on the 14th of December was interred in the Temple church, where a mural monument was raised to his memory. [Note 16.] He left considerable wealth, chiefly acquired, as it appears, by means of his connection with the family of the Earl of Kent. His library, which was of great extent and value, he had originally designed to bequeath to the Bodleian; but being offended by the refusal of the loan of a MS. from that library, without the usual pledge for its safe restitution, he bequeathed his books to his executors, Edward Hayward, John Vaughan, and Matthew Hale; who, regarding themselves "as the executors, not of his anger, but of his will," carried their testator's original intentions into effect, and deposited his valuable collection in the Bodleian. [Note 17.] A collection of ancient marbles, the property of Selden, was also deposited at Oxford. [Note 18.]

The character of Selden has been drawn by one who knew and admired him. "He was a person whom no character can flatter, or transmit in any expressions equal to his merit and virtue. He was of so stupendous a learning in all kinds, and in all languages (as may appear in his excellent and transcendent writings), that a man would have thought he had been entirely conversant amongst books, and had never spent an hour but in reading and writing; yet his humanity, courtesy, and affability were such, that he would have been thought to have

been bred in the best courts, but that his good-nature, charity, and delight in doing good, exceeded that breeding. His style in all his writings seems harsh, and sometimes obscure, which is not wholly to be imputed to the abstruse subjects of which he commonly treated, out of the paths trod by other men, but to a little undervaluing the beauty of style, and too much propensity to the language of antiquity; but in his conversation he was the most clear discourser, and had the best faculty of making hard things easy and presenting them to the understanding that hath ever been known. Mr. Hyde was wont to say, that he valued himself upon nothing more than upon having had Mr. Selden's acquaintance from the time he was very young; and held it with great delight as long as they were suffered to continue together in London; and he was much troubled always when he heard him blamed, censured, and reproached for staying in London, and in the parliament, after they were in rebellion, and in the worst times, which his age obliged him to do; and how wicked soever the actions were which were every day done, he was confident he had not given his consent to them, but would have hindered them if he could with his own safety, to which he was always enough indulgent. If he had some infirmities with other men, they were weighed down with wonderful and prodigious abilities and excellencies in the other scale." *

Some traits of Selden's personal character remain to be mentioned. His kindness to scholars in distress has been recorded in a letter from Merrick Casaubon to the primate Usher: "I was with Mr. Selden after I had been with your grace, whom, upon some intimation of my present condition and necessities, I found so noble as that he did not only presently furnish me with a considerable sum, but was so free and forward in his expressions, as that I could not find in my heart to tell him much of my purpose of selling, lest it might sound as a further pressing upon him, of whom I had already received so much." [Note 19.] Notwithstanding the

* Life of Clarendon.

courtesy and affability of which Lord Clarendon speaks, it appears that upon some occasions the habits of the scholar overcame the usual urbanity of Selden's disposition. We are told by Calomies, that when Isaac Vossius was sometimes ascending his staircase to pay him a visit, Selden, being engaged in some deep research, would call out to him from his study that he was not at leisure for conversation. Whitelocke, however, says that "his mind was as great as his learning; that he was as hospitable and generous as any man, and as good company to those whom he liked."* As to his religious opinions, we have the testimony of Sir Matthew Hale. "I know," says Baxter, in his additional notes on the life of Hale, "you are acquainted how greatly he valued Mr. Selden, being one of his executors, his books and picture being still near him. I think it meet, therefore, to remember that because many Hobbists do report that Mr. Selden was at the heart an infidel, and inclined to the opinions of Hobbes, I desired him to tell me the truth herein: and he oft professed to me that Mr. Selden was a resolved, serious Christian, and that he was a great adversary to Hobbes' errors, and that he had seen him openly oppose him so earnestly, as either to depart from him or drive him out of the room." In another place, Baxter tells us that Selden would not have Hobbes in his chamber while he was dying, calling out "No atheists!" But, according to Mr. D'Israeli, it appears from Aubrey's papers that Hobbes stood by the side of his dying friend.†

After the death of Selden, a small volume of apophthegms was published by his amanuensis, Richard Milward, under the title of *Selden's Table Talk*. The authenticity of these apophthegms has been sometimes doubted, and especially by Dr. Wilkins, who considers many parts of the volume as derogatory to the character of Selden. Another of Selden's biographers ‡, however, is of opinion that the Table Talk has a great air of genuineness, and has accordingly extracted from it many passages as illus-

* Memor. p. 608. † Quarrels of Authors, vol. iii. p. 33.
‡ Dr. Aikin.

trative of the sentiments and habits of Selden. "There are some of the thoughts and maxims recorded in Selden's Table Talk," observes that judicious writer, "in which there appears a sufficient conformity with his conduct and writings to remove all suspicion that they were not his real sentiments. There are, besides, many of a lighter kind, and some, as has been hinted, more lax and worldly in their morality than might have been expected from a man of his honourable character, but which, perhaps, were advanced in conversation as plausible deductions from principles only assumed for the sake of argument." [Note 20.]

A collected edition of the works of Selden was published in the year 1726, by Dr. David Wilkins, archdeacon of Suffolk, &c. in 3 vols. folio (usually bound in six), to which the editor has prefixed a life of the author.

Some specimens of Selden's poetical attempts remain *; but they are not such as to induce any regret that he devoted so little of his time to the Muses. He is, however, introduced by Sir John Suckling, in his "Session of the Poets."

* "There was Selden, and he sat close by the chair."

MATTHEW HALE.

1609—1676.

Matthew Hale was born on the 1st Nov. 1609, at Alderley, in the county of Gloucester. [Note 21.] His grandfather, Robert Hale, had acquired a considerable fortune in trade, which he divided amongst his five sons; the second of whom, Robert, was educated for the bar, and married Joan, the daughter of Matthew Poyntz, esquire, of Alderley, a branch of the noble family of the Poyntzes of Acton. Matthew, the subject of this memoir, was the only issue of the marriage. His father

* See his verses in Greek, Latin, and English, in Brown's Britannia's Pastorals.

was a man of highly scrupulous conscience, and is said to have abandoned his profession, on the ground that the practice of it was not consistent with a strict adherence to truth and justice. According to Burnet, "he gave over the practice of the law, because he could not understand the reason of giving colour in pleading, which, as he thought, was to tell a lie."* While yet an infant, Matthew Hale was deprived of both his parents, and was educated under the directions of Anthony Kingscot, of Kingscot, esquire, his next kinsman, after his uncles, on the maternal side.

His guardian, being attached to the doctrines of the Puritans, placed young Hale under the tuition of teachers professing similar opinions; and at this period of his life it is probable that those habits of strictness, which afterwards distinguished both his principles and manners, were formed. At the age of seventeen, he became a student of Magdalen-hall, Oxford; and for some time distinguished himself there, as at school, by his proficiency in his studies. The dissipations of the university, however, offered temptations which the youthful Puritan was unable to resist; and he plunged into the abomination of stage-plays with a looseness proportioned to his former austerity. Rejecting the precise garments, to which he had been accustomed, he began to indulge in the sinfulness of fashionable habiliments; and being gifted by nature with a powerful and agile frame, he forsook the lectures of his tutor for the lessons of the fencing-master. To such an extent, at this period, did he carry his love for martial weapons, that on his tutor's departure to the Low Countries, as the chaplain of the celebrated Lord Vere, young Hale resolved to accompany him, and, in the military phrase of the seventeenth century, to trail a pike in the Prince of Orange's army.

From the execution of this warlike resolution he was deterred by an accident. Being engaged in a suit at law relating to his estate, he was induced to visit London, with a view of forwarding the interests of his suit. Having

* Life of Hale, p. 2.

retained Serjeant Granville [Note 22.] he became personally acquainted with that learned lawyer, who, remarking the many valuable qualities which his young client possessed, persuaded him to relinquish his idea of military service, and to devote himself to the study of the law. Accordingly, on the 8th November, 1629, he was admitted a student of Lincoln's Inn. The ardour which he had lately displayed in the pursuit of pleasure was now applied to better purposes; and he commenced his studies with a zealous industry which could not fail to ensure success. Discarding his gay clothing, he assumed a plain and student-like habit, and for some years [Note 23.] devoted sixteen hours each day to study. But in despite of this change, his attachment to convivial society still occasionally over-mastered him, till an incident occurred which produced a powerful effect upon his mind. Having joined a party of his companions, they indulged so deeply in draughts of wine, that one of the company became insensible, and the most serious apprehensions were entertained for his life. Hale was so much affected by this accident, that, retiring into another room, he fell upon his knees, and prayed earnestly to God that his friend might be restored, and that he might be himself pardoned for having been a participator in such excesses. At the same time he made a vow never more to be guilty of similar intemperance, nor again to drink a health while he lived, a vow which he is said to have observed with much strictness. It was probably under the influence of these feelings that he composed that scheme of daily employments, which his reverend biographer has preserved *, and which is remarkable for the tone of strict religious feeling pervading it. His early impressions appear to have recurred in full force; and so austere did he become, as to exhibit the greatest negligence in his personal appearance, insomuch, that upon one occasion he was impressed as a fit person to serve his majesty, and was only released in consequence of his being recognised by some passing acquaintance.

* Burnet's Life, p. 9.

The diligence and ability displayed by Hale attracted the attention of Noy, the attorney-general [Note 24.], who undertook to direct his studies, and evinced so warm an interest in his success, that he was distinguished amongst his fellow-students by the name of young Noy. The patronage of less important personages than an attorney-general has been found beneficial to many an unknown young lawyer; and under the auspices of Noy the talents of Hale speedily became known. Nor did he himself neglect any means which industry and perseverance could afford of ensuring success. According to the laborious practice of that day, he compiled in the course of his professional studies a common-place book, exhibiting so much learning and diligence, that when he was afterwards raised to the dignity of chief baron, it was borrowed from him by one of the judges of the king's bench, who, on perusing it, declared, that, though composed at so early an age, it was a performance which no lawyer in England could have surpassed [Note 25.] In prosecuting his studies, Hale did not confine himself to an acquaintance with the principles of our own municipal law, but likewise turned his attention to the writers on Roman jurisprudence, in whose works he discovered the origin and grounds of many of the rules which prevail in our own system. It was to him a subject of regret, and the sentiment may at the present day be repeated, that the principles of the civil law are so seldom studied by our common lawyers.

It was the good fortune of Hale, at this early period of his life, to secure the friendship of two very eminent persons, the learned Selden* and John Vaughan [Note 26.], afterwards chief justice of the court of common pleas. The various acquirements and instructive conversation of the former led young Hale to extend the scope of his studies, and to apply himself to literary and scientific pursuits. Some branches of the mathematics and of natural philosophy engaged a considerable portion of his attention, and his writings on these subjects attest the

* See his Life, in this volume.

diligence of his application. He took a pleasure, also, in studying medicine and anatomy, in which his biographer affirms him to have made no inconsiderable progress. Ancient history and chronology also afforded an employment for his leisure hours; but his principal delight was the study of divinity, to which he was probably led by the associations of his childhood. These pursuits he used to call his diversions, to which he recurred for refreshment, when fatigued with his professional studies. Like many men of ardent genius, he possessed the valuable faculty of applying the powers of his strong and active mind to various subjects, without that distraction of thought to which persons of inferior capacity are subject. His indefatigable industry also enabled him to accomplish tasks which to the indolent would seem incredible. He rose early in the morning, and as he sacrificed no portion of the day to idle society, nor even indulged in any useless correspondence by letter, he found leisure to apply to his various literary pursuits without injury to his professional prospects. His temperance also was highly favourable to mental occupations; and so sparing was he in his diet, that his meals never prevented him from immediately resuming the labours which they had interrupted. It is, perhaps, to the variety of studies in which Hale engaged that his extensive learning is to be attributed. A complete change in the nature of the objects upon which the mind is engaged is almost equivalent to repose, and is, perhaps, equally salutary to the mental health.

With all the advantages which his long and laborious studies could confer, Hale was called to the bar. The period of his entrance into public life was unfavourable. The civil dissensions with which the country was beginning to be harassed rendered it difficult for the members of a profession standing so conspicuously in the eye of the public to play a wise and honest part. The early prepossessions of Hale must have led him to favour the country party, while his intimacy with Noy might probably induce him to regard the friends

of prerogative with less distaste. In forming the scheme of his conduct at this difficult period of his life, he is said to have proposed to himself as a model the character of Atticus, who, amidst the turbulence of contending factions, met with the esteem and regard of all. [Note 27.] In imitation of the Roman, Hale resolved to take no part in the political contests with which the country was agitated. The only interest which he manifested in public affairs was in succouring the distressed of both parties. The strict neutrality thus professed by Hale, at a period when so much was at stake on both sides, is not a subject for applause. When the violent and the indiscreet of all parties are roused to action, it does not become the moderate and sensible portion of society to remain unmoved, and to preserve their individual repose at the expense of the tranquillity of the state. At a later period of his life Hale appears to have been sensible of this error, and exerted the influence which his high character gave him in endeavouring to place the liberties of his country upon a sure foundation.

The neutrality which he observed in politics, and the esteem in which he was held by both parties, on account of his general character, rendered him a very desirable advocate to such of the prerogative party as were put upon their trials for political offences. He was accordingly engaged in many of the great state trials of this period, and appeared as counsel for the Earl of Strafford and for Archbishop Laud.* The argument delivered on this occasion by Herne, the archbishop's leading counsel, is said to have been compiled by Hale. [Note 28.] He was also counsel for the Duke of Hamilton, Lords Holland, Capel, and Craven. On the trial of the latter nobleman, it is said, that on being threatened by the attorney-general for appearing against the government, he answered, "that he was pleading in defence of those laws which they declared they would maintain and preserve, and he was doing his duty

* 4 State Trials, 338.

to his client, so that he was not to be daunted with threatenings."

Notwithstanding his aversion to political engagements, we are told by Wood *, that in the year 1643 Hale took the covenant, and appeared several times with other lay persons in the assembly of divines at Westminster. He was held in much esteem by the members of the parliamentary party, and in his capacity of counsel was added to the commissioners deputed by parliament to treat with the royal commissioners, as to the reduction of Oxford. On this occasion, he exerted himself to save that ancient seat of learning from the destruction with which it was threatened. On the death of Charles I., and the establishment of the commonwealth, Hale, less scrupulous than his friend Vaughan, who wholly declined practice until the restoration, took the engagement "to be true and faithful to the commonwealth of England, without a king or house of lords;" an act which the high court of justice seem to have required before they would permit counsel to argue.† Having by this engagement secured the confidence of the parliament, Hale was, on the 20th of January, 1651-2, appointed one of a committee to consider the reformation of the law. In this labour he had some singular associates, amongst whom may be mentioned Major-general Desborough, Col. Tomlinson, and the celebrated Hugh Peters. The latter was one of the most active members of the committee: according to Whitelocke‡, "he understood little of law [Note 29.], was very opinionative, and would frequently mention some proceedings of law in Holland, wherein he was altogether mistaken."‡ The committee met several times in the house of lords; but considering the nature of the times and of the materials of which it was composed, it is not wonderful that little was effected by its labours. Some resolutions were, however, passed, which may afford suggestions not unworthy of the attention of those who

* Ath. Ox., vol. ii. col. 574.
† See the trial of Love, 5 State Trials, 211. ‡ Memorials, p. 520.

are desirous of seeing the abuses of our suits at law amended.* The following may be taken as a specimen. "If the defendant in a personal action before pleading tender satisfaction to the plaintiff, with costs of suit, and it appear afterwards at the trial to the jury sufficient, and not accepted of, the plaintiff to lose his own and pay the other's costs in the suit." [Note 30.]

On the death of the king, and the destruction of that authority from which, according to the theory of the constitution, the judges derived their powers, six out of the twelve judges immediately resigned their offices. The two chief justices, the chief baron, and three of the puisne judges, however, signified their readiness to continue in the exercise of their functions, provided the commons passed a declaration in favour of maintaining the fundamental laws of the realm, and at the same time repealed the oaths of allegiance and supremacy. A vote was also passed for filling up the six vacant seats, which were mostly supplied by the promotion of serjeants. † On a vacancy again occurring in the common pleas, the place was offered to Hale, who had previously, on the 25th of January, 1653, been created a serjeant.‡ It has been supposed, that this offer was made by the desire of Cromwell, who was willing to remove from the bar a man whose honest and resolute character might prove injurious to his service; but it is more probable, that Hale was raised to the bench as one whose early connections with the country party rendered him not unacceptable to the predominant faction. At first he hesitated as to the acceptance of the proffered dignity. His practice was considerable and lucrative, and he had some doubts as to the propriety of acting under a commission from the then ruling powers. Upon being urged, however, by many persons, and even by Sir Orlando Bridgman and Sir Geoffrey Palmer, men of his own profession, and much attached to the royal party, and having satisfied some of his scruples by conversing with

* Memorials, p. 520. † Com. Journ. 1 June, 1649.
‡ Wood. Ath. Ox. ubi sup.

two eminent divines, Dr. Sheldon and Dr. Henchman, he came to the resolution, "that as it was absolutely necessary to have justice and property kept up at all times, it was no sin to take a commission from usurpers." [Note 31.] On his appointment to the bench, Hale did not hesitate for some time, in the usual routine of his judicial duties, to preside at the trial of criminals, though he refused to take any part in the proceedings instituted against individuals for political offences. At length he began to entertain scruples, which would appear to be wholly unfounded, with regard to the lawfulness of inflicting punishment by virtue of the commission under which he sat, and accordingly he refused to sit on the crown side at the assizes. It is probable that this refusal was not unpleasing to the government, as upon more than one occasion Hale had displayed a resolution not to favour the wishes of those in power at the expense of justice. Soon after he was raised to the bench, two soldiers were tried before him at Lincoln for murder, under the following circumstances. An inhabitant of Lincoln, who had been one of the royal party was met by one of the soldiers in the fields with a fowling-piece in his hand. The soldier observing him with the arms informed him that the protector had ordered that none who had been of the king's party should carry arms, and attempted to force them from him. The man resisted, and, throwing the soldier down, beat him and left him. The soldier having met with one of his companions, prevailed upon him to accompany him for the purpose of taking revenge. They accordingly watched for their adversary, and on his approach, the soldier who had before demanded the fowling-piece again addressed him; and while they were struggling for the possession of the arms, the other soldier, coming behind the man, ran his sword through his body. For this act the men were tried: one of them was found guilty of manslaughter, the other of murder. At the trial Col. Whaley, who was in command of the garrison, came into court, and, addressing the bench, urged that the de-

ceased was killed for disobeying the protector's orders, and that the soldier had but done his duty. The judge, however, was neither convinced by the colonel's arguments nor daunted by his threats; and passing judgment upon the prisoner, ordered speedy execution to be done, lest a reprieve should be granted. Upon another occasion, also, he displayed a degree of moral courage, and a sense of justice, highly honourable to him. Understanding that the protector had ordered a jury to be returned to try a cause in which he was particularly interested, the judge called upon the sheriff to give an explanation of this transaction. The sheriff professed himself wholly ignorant of it, and referred to the undersheriff, who admitted the jury had been returned by an order from Cromwell. Hale, having pointed out the statute which directs that all juries shall be returned by the sheriff or by his lawful officer, dismissed the jury, and refused to try the cause. On his return from the circuit the protector expressed his high displeasure at his conduct, and told him, in anger, that he was not fit to be a judge; to which the only answer Hale returned was, that it was very true.

In some instances he was prevented, by the exertion of an authority which he could not control, from giving a clear way to the course of justice. Some anabaptists had rushed into a church, and violently disturbed the congregation while engaged in receiving the sacrament. This outrage having reached the ears of Hale while on the circuit, he resolved to have the offenders brought to justice, it being intolerable, as he well observed, that those who pretended so highly to liberty of conscience should molest others in the exercise of their religion. The proceedings against these offenders were, however, stayed by an authority superior to that of the judge. It would, perhaps, have been more honourable to Hale if, notwithstanding the disgust which the injustice of such proceedings occasioned, he had still persevered in distributing the criminal laws of the country with honesty and impartiality. It does not appear that his secession

from the crown courts was the consequence of any hint from the government; for on the trial of Penruddock a special messenger was despatched to him requiring him to assist at it. It was at this time vacation, and the judge was resident at his country house at Alderley. His answer was, that he thought four terms and two circuits were enough, and that the short interval of rest was barely sufficient for the arrangement of his own affairs, and upon this ground he excused himself.

In the year 1654, while filling the office of one of the justices of the common pleas, Hale was elected one of the five knights of the shire returned to parliament for the county of Gloucester. [Note 32.] He does not appear to have entertained any scruples at the lawfulness of appearing in that assembly, where he proposed a resolution which indicated very clearly the nature of his political sentiments. He moved that the legislative authority should be affirmed to be in the parliament of the people of England, and a single person qualified with such instructions as that assembly should authorize, but that the military power for the present should reside in the protector.* He likewise exerted himself as became his character to moderate the wild designs which were brought forward by various enthusiastic members. Amongst other extravagant motions, was one to destroy all the records in the Tower, and to settle the nation on a new foundation. The opposition of Hale, whose intimate acquaintance with those relics of former ages was well known, was successful; and such was the zeal with which he spoke, that "he stopped even the mouths of the frantic people themselves."

On the death of Oliver Cromwell, Hale refused to act under a commission from the Protector Richard, alleging that he could no longer sit under such authority. In the same year, he was returned as one of the members for the university of Oxford; and, in 1660, he appeared as knight of the shire for the county of Gloucester, in the

* Goddard's Journal, prefixed to Burton's Diary, vol. i. Godwin, vol. iv. p. 118.

parliament which recalled Charles II. When the return of the king was loudly demanded, Hale distinguished himself by a motion, the policy of which has been questioned, but which, had he been fortunate enough to carry it, might have prevented many of the evils and much of the misgovernment which followed the restoration. He moved that a committee might be appointed to look into the propositions that had been offered by the late king during the war, particularly at the treaty of Newport, that from thence such propositions might be digested as might be fit to be sent over to the king. The motion was opposed by Monk, who urged the danger of delay in the then agitated state of the country, and moved, that commissioners should be immediately despatched to bring over the king. To this the house assented with a shout, and Hale's motion was not again mentioned.* The part which he acted on this occasion does not appear to have made an ill impression on the court, as his name is found amongst the commissioners for the trial of the regicides.†

When it became necessary, on the Restoration, to remodel the bench, Clarendon wisely resolved to fill the vacant seats with men of probity and character. He had observed the ill effects which, in the reign of Charles I., had followed the appointment of profligate men, and the conversion of the judges into the instruments of government, and he resolved to prevent the repetition of the evil by elevating such men as Hale to the bench.‡ But it was not without considerable reluctance that Hale was prevailed upon again to undergo the arduous duties of a judicial station. He has left a statement of the reasons which at this time disinclined him to accept office.§ From this document we learn the amount of his fortune; the smallness of which he urges as an objection to his acceptance of the dignity. "Because the smallness of my estate, the greatness of my

* Burnet's Own Times. † 5 State Trials, 986.
‡ See Clarendon's Life, vol. ii. p. 42. ed. 1759.
§ Preface to Hargrave's Law Tracts, p. x.

charge, and some debts, make me unable to bear it with that decency which becomes it, unless I should ruin myself and family: my estate not above 500*l.* per annum; six children unprovided for; and a debt of 1000*l.* lying upon me." [Note 33.] Notwithstanding these objections, Hale was soon afterwards appointed chief baron of the exchequer; and, on delivering to him his commission, the chancellor, Lord Clarendon, expressed in warm terms the singular esteem he entertained for his character, telling him, "that if the king could have found an honester and fitter man for that employment, he would not have advanced him to it; but that he had preferred him, because he knew no other who deserved it so well." The retiring disposition of the chief baron induced him to shun the customary honour of knighthood; and it was only upon meeting the king at the house of the chancellor, by an arrangement unknown to himself, that he submitted to the ceremony.

In his new station he devoted himself with diligence to the duties of the bench, but seldom took any part in political transactions. After the great fire of London he sat at Clifford's Inn, as one of the commissioners for settling the disputes between landlord and tenant; and to his labours, and to those of Sir Orlando Bridgman, the chief justice of the common pleas, the amicable arrangement of the disputes, and the peaceful rebuilding of the city were generally attributed.

When the project was set on foot for the comprehension of the dissenters, or an accommodation between that body and the church of England, a conference took place between the heads of both parties, and Sir Matthew Hale was applied to by Dr. Wilkins, on the part of the church, and by Baxter, on behalf of the dissenters, to prepare a bill for the purpose of effecting the desired accommodation. This task Hale readily undertook, as he had lived on terms of friendship and intimacy with persons of both parties: but the design was abandoned, in consequence of a vote of the commons in opposition to it, at the commencement of the next session. The

dissenters had to struggle, not only against the prejudices of the church of England, but against the machinations of those who favoured the church of Rome; and who sought, by preventing a junction between the churchmen and the dissenters, to compel the latter to join their own party, and to insist with them upon a general toleration.

In the year 1665, Sir Matthew Hale was unfortunately called upon to preside at the trial of two wretched women who were indicted for the crime of witchcraft. In reviewing his conduct upon this occasion, allowance must be made for the prejudices of the times in which he lived; prejudices, perhaps, strengthened in his case by the zeal with which he had devoted himself to the speculative part of theological learning. Still it is impossible to acquit him of a too easy credulity on this occasion, since in the course of the trial some experiments were instituted with regard to the correctness of the representations made by the persons supposed to be affected, the result of which induced some impartial bystanders to declare, that they believed the whole transaction a mere imposture.* At the conclusion of the trial Hale did not sum up the evidence, but left the case to the jury, with a very short direction, professing, at the same time, his belief in the crime of witchcraft. He said, "that there were such creatures as witches he made no doubt at all; for, first, the Scripture had affirmed so much; secondly, the wisdom of all nations had provided laws against such persons, which is an argument of their confidence of such a crime. And such hath been the judgment of this kingdom, as appears by that act of parliament which hath provided punishments proportionable to the quality of the offence." The prisoners were found guilty, and, no reprieve being granted, were executed pursuant to their sentence without making any confession; which, upon some other occasions, had been extorted, by their own superstitious terrors, from the unhappy persons accused of this crime. [Note 34.]

* State Trials, vol. vi. p. 698.

On the 18th of May, 1671, Sir Matthew Hale was promoted to the office of chief justice of the court of king's bench; and such was the reputation which he had acquired in his judicial capacity, that he is said to have drawn after him into that court much of the business which had been depending in the exchequer. He did not, however, preside long in this court: his strength and health shortly began to fail him, and though for a time he endeavoured to perform the duties of his office, being supported to the bench by his servants, he at length resolved to resign the seat for which he found himself unfit. He made an earnest application for his *writ of ease;* but such was the general satisfaction which his conduct as chief justice had given, that the king delayed for some time the granting of his request. At length, wearied with the burthen of duties which he was unable to perform, he prepared, in his own hand, a short deed of surrender of his office, which, on the 21st of February, 1675, going before a master in chancery, he sealed and delivered and acknowledged for the purpose of enrolment. On the previous day, he had surrendered to the king in person, who was pleased to dismiss him with great grace, and to promise the continuance of his pension during life. After his retirement he suffered much from attacks of the asthma, and from dropsy, under which he sank, and died on Christmas day, 1676. He was buried on the 4th of January, in the churchyard at Alderley, among his ancestors.

Sir Matthew Hale was twice married: his first wife was Ann, the daughter of Sir Henry Moore, of Faly, in Berkshire, by whom he had ten children: his second wife was Ann, the daughter of Mr. Joseph Bishop, of Faly, and had been, according to the Hon. Roger North, a servant in his household.

The character of Sir Matthew Hale as a judge was splendidly pre-eminent. His learning was profound; his patience unconquerable; his integrity stainless. In the words of one who wrote with no friendly feeling towards him, "his voice was oracular, and his person

little less than adored."* The temper of mind with which he entered upon the duties of the bench is best exemplified in the following resolutions, which appear to have been composed on his being raised to the dignity of chief baron at the restoration.

"Things necessary to be continually had in remembrance:

"1. That in the administration of justice I am intrusted for God, the king, and country; and therefore,

"2. That it be done, 1. uprightly; 2. deliberately; 3. resolutely.

"3. That I rest not upon my own understanding or strength, but implore and rest upon the direction and strength of God.

"4. That in the execution of justice I carefully lay aside my own passions, and not give way to them however provoked.

"5. That I be wholly intent upon the business I am about, remitting all other cares and thoughts as unseasonable and interruptions.

"6. That I suffer not myself to be prepossessed with any judgment at all, till the whole business and both parties be heard.

"7. That I never engage myself in the beginning of any cause, but reserve myself unprejudiced till the whole be heard.

"8. That in business capital, though my nature prompt me to pity, yet to consider there is a pity also due to the country.

"9. That I be not too rigid in matters purely conscientious, where all the harm is diversity of judgment.

"10. That I be not biassed with compassion to the poor, or favour to the rich, in point of justice.

"11. That popular or court applause or distaste have no influence in any thing I do, in point of distribution of justice.

"12. Not to be solicitous what men will say or think,

* Roger North's Life of Lord Guilford, vol. i. p. 126.

so long as I keep myself exactly according to the rule of justice.

" 13. If in criminals it be a measuring cast, to incline to mercy and acquittal.

" 14. In criminals that consist merely in words, where no more harm ensues, moderation is no injustice.

" 15. In criminals of blood, if the fact be evident, severity is justice.

" 16. To abhor all private solicitations, of what kind soever, and by whomsoever, in matters depending.

" 17. To charge my servants, 1. Not to interpose in any matter whatsoever; 2. Not to take more than their known fees; 3. Not to give any undue precedence to causes; 4. Not to recommend counsel.

" 18. To be short and sparing at meals, that I may be the fitter for business."

Under the influence of resolutions like these, the conduct of Hale on the bench appears to have been almost irreproachable. So rooted and vehement was his abhorrence of every thing like improper influence, that he carried his punctilious feelings on this subject to an almost fantastical excess. Some anecdotes of this " unreasonable strictness" have been preserved. A gentleman who happened to be a party in a cause which stood for trial at the assizes sent a buck to the judge as a present. On the trial coming on, Hale remembered the name, and desired to know " if he was the same person who sent him the venison ?" On discovering that this was the fact, he told the donor, that " he could not suffer the trial to go on till he had paid him for his buck." The gentleman answered, " that he never sold his venison, and that he had done nothing to him which he did not do to every judge that had gone that circuit," an assertion confirmed by several gentlemen present. The judge, however, calling to mind the maxim of Solomon, that *a gift perverteth the ways of judgment*, would not suffer the trial to proceed until the venison was paid for, which the gentleman resenting as an insult, withdrew the record. In the same manner, Hale directed his servants to pay

for the six sugar-loaves which, according to custom, were presented to him at Salisbury by the dean and chapter. He carried the same spirit into the common transactions of life, and on making purchases insisted upon paying more than was demanded; a refinement which even the most jealous construction of his actions could scarcely have rendered necessary. On being told that he seemed to make ill bargains, he replied, "that it became judges to pay more for what they bought than the true value, that so those with whom they dealt might not think they had any right to their favour by having sold such things to them at an easy rate." He added, that it was suitable to the reputation which a judge ought to preserve to make such bargains that the world might see they were not too well used on some secret account. But even this over-scrupulous delicacy has not preserved Sir Matthew Hale from the imputation of showing favour to those towards whom his prejudices inclined him. "He was an upright judge," says the Honourable Roger North*, "if taken within himself; and when he appeared, as he often did and really was, partial, his inclination or prejudice, insensibly to himself, drew his judgment aside. His bias lay strangely for and against characters and denominations, and sometimes the very habits of persons. If one party was a courtier and well dressed, and the other a sort of puritan with a black cap and plain clothes, he insensibly thought the justice of the cause was with the latter. If the dissenting or anti-court party was at the back of a cause, he was very seldom impartial, and the loyalists had always a great disadvantage before him. It is said he was once caught. A courtier, who had got a cause to be tried before him, got one to go to him, as from the king, to speak in favour of his adversary, and so carried his point; for the chief justice could not think any person to be in the right that came so unduly recommended." [Note 35.] Taking into the account the temper of this lively writer, it is not improbable that the partiality

* Life of Lord Guilford, vol. i. p. 119.

towards the puritans, of which he complains, was nothing more than that due and decent degree of favour with which a judge is bound to regard all the suitors before him, but which, being seldom extended by prerogative magistrates towards persons of that class, would naturally appear to a prerogative writer to be the result of democratical prejudices. The same author, who accuses Hale of professing "demagogical principles," has yet borne testimony to the impartiality with which he conducted himself, while presiding in the exchequer, in cases in which the crown was concerned. "I have heard him (Lord Guilford) say, that while Hale was chief baron of the exchequer, by means of his great learning, even against his inclination, he did the crown more justice in that court than any others in his place had done with all their good will and less knowledge. But his lordship knew also his foible, which was leaning towards the popular; yet when he knew the law was for the king (as well he might, being acquainted with all the records of that court, to which men of the law are commonly strangers), he failed not to judge accordingly."*

In the demeanour of Hale on the bench, gravity, patience, and urbanity were mingled. He exhibited nothing of that hasty and captious bearing, towards the counsel who appeared before him, into which some judges have been betrayed; although when he saw them wandering from the point, he led them back to it; a course by which he divested the cases argued before him of many difficulties and perplexities. In summing up to the jury, he would require the bar to interrupt him in case they perceived any mistake or omission in his statement; an interruption which many judges of meaner abilities have regarded as an insult. To the younger professors of the law, and to the students, Hale was singularly urbane, endeavouring to encourage them, and taking every opportunity of affording them instruction. "I have known the court of king's bench," says the Hon. Roger North, "sitting every day from eight to twelve, and the Lord

* Life of Lord Guilford, vol. i. p. 118.

Chief Justice Hale managing matters of law to all imaginable advantage to the students, and in that he took a pleasure, or rather pride. He encouraged arguing when it was to the purpose, and used to debate with the counsel, so as the court might have been taken for an academy of sciences as well as the seat of justice." *

On the trial of criminals, Hale displayed that temper and moderation so requisite to the ends of justice, when the accused and the accusers meet on unequal terms. He indulged in no levity, he exhibited no harshness or severity, but summed up with an impartiality which left even the prisoners nothing of which to complain. He would never suffer the witnesses to be intimidated or confused by the examination of counsel. When it became necessary for him to pronounce sentence of death, the solemn and earnest exhortations with which he accompanied it, so free from all affectation, so serious and so devout, are said to have attracted strangers to listen to the impressive lesson.

As a lawyer, and especially as a constitutional lawyer, Hale has, perhaps, never been equalled. His young rival, the Lord Keeper North, "revered him for his great learning in the history, law, and records of the English constitution." † Comparing him with Sir Edward Coke, he transcended even that great luminary of the law in the accuracy and extent of his antiquarian knowledge, in his intimate acquaintance with the records, and in the orderly arrangement of the vast stores of learning which he had acquired. The respect paid to his legal opinions even in his own day was such, that when sitting as the puisne baron of the exchequer, and delivering his opinion last, at variance with that of his brothers, the latter, struck with the force of reasoning displayed in Hale's arguments, have been known to retract the opinion they had expressed. His published professional works are worthy of the high reputation which he enjoyed while living, and will for ever remain as monuments of his

* Discourse on the Study of the Laws, p. 32.
† Life of Lord Guilford, p. 118.

diligence and profound learning. To his great work on the Pleas of the Crown, reference is made, as to the records of the law themselves. His admirable *Analysis of the civil part of our law* supplied Sir William Blackstone with the idea of his Commentaries, which have been termed "A superstructure raised on the foundation of Lord Hale's previous digest and distribution of the subject."* Many of the invaluable treatises and collections compiled by the industry and learning of Sir Matthew Hale still remain unpublished. At the close of the last century, the excellent treatise, *De jure maris, de portubus maris, and concerning the custom of goods*, a work full of profound learning, and most important in a constitutional point of view, was published by Mr. Hargrave in the first volume of his Law Tracts. That gentleman was also fortunate enough to obtain another short tract entitled, *Considerations touching the amendment of law*, which he has in the same manner given to the public. At the present moment, when the amendment of the law has not only engaged the attention of the legislature, but has become a subject of no inconsiderable interest with the people at large, it will not be unprofitable to state what were the opinions of Sir Matthew Hale as to the possibility of effectuating so important an object. After some observations on the evils arising from "over-hastiness and forwardness to alterations in the laws," he proceeds to remark upon "the over-tenacious holding of laws, notwithstanding apparent necessity for and safety in the change." The principles which Hale here lays down, though most obvious and simple, are yet most admirable, and well deserve the attention of those legislators who can see nothing in our institutions requiring reform. "We must remember that laws were not made for their own sakes, but for the sake of those who were to be guided by them; and though it is true that they are and ought to be sacred, yet if they be or are become unuseful for their end, they must either be amended, if it may be, or new laws be substituted, and the old repealed,

* Preface to Hargrave's Law Tracts, xii.

so it be done regularly, deliberately, and so far forth only as the exigence or convenience justly demands it; and in this respect the saying is true, *Salus populi suprema lex esto.*" * * * "He that thinks a state can be exactly steered by the same laws in every kind as it was two or three hundred years ago, may as well imagine that the clothes that fitted him when a child should serve him when he was grown a man. The matter changeth, the custom, the contracts, the commerce, the dispositions, educations, and tempers of men and societies, change in a long tract of time, and so must their laws in some measure be changed, or they will not be useful for their state and condition; and besides all this, time is the wisest thing under heaven. These very laws, which at first seemed the wisest constitution under heaven, have some flaws and defects discovered in them by time. As manufactures, mercantile arts, architecture, and building, and philosophy itself, secure new advantages and discoveries by time and experience, so much more do laws which concern the manners and customs of men."

The multiplication and growth of the laws are urged by Hale as inducing a necessity for their revision and reduction:—"By length of time and continuance, laws are so multiplied and grown to that excessive variety, that there is a necessity of a reduction of them, or otherwise it is not manageable. * * * And the reason is, because this age, for the purpose, received from the last a body of laws, and they add more, and transmit the whole to the next age; and they add to what they had received, and transmit the whole stock to the next age. Thus, as the rolling of a snow-ball, it increaseth in bulk in every age till it becomes utterly unmanageable. And hence it is that, even in the laws of England, we have so many varieties of forms of conveyances, feoffments, fines, release, confirmation, grant, attornment, common recovery deeds enrolled, &c. because the use coming in at several times, every age did retain somewhat of what was past, and add somewhat of its own, and so carried over the whole product to the quotient. And this pro-

duceth mistakes: a man, perchance, useth one sort of conveyance where he should have used another. It breeds uncertainty and contradiction of opinion, and that begets suits and expense. It must necessarily cause ignorance in the professors and profession itself, because the volumes of the law are not easily to be mastered." The mode in which Sir Matthew Hale proposed to accomplish the desired reform in our juridical system is pretty fully explained by him: — that the king, on the address of both houses of parliament, should direct the judges and other fit persons to prepare proper bills to effectuate the object: — that these bills should be brought into the house of commons: — that, after having been twice read and committed, the judges should be called before the committee to explain the reasons and grounds of the proposed alterations; and that those learned persons should again attend the house of lords for the same purpose. "Bills thus prepared and hammered," adds Sir Matthew Hale, "would have fewer flaws, and necessity of supplemental or explanatory laws, than hath of late times happened." It is to be much regretted that the tract from which these extracts have been made is left imperfect by the author, and the particular alterations which he probably intended to recommend are consequently unknown. A few pages only are devoted to these subjects, from which, however, some valuable suggestions are to be gathered. The observations on the propriety of rendering the county court a cheap and efficient tribunal are especially worthy of notice. In the year 1796, Mr. Hargrave also published the excellent treatise of Hale *On the Jurisdiction of the Lords' House of Parliament*, and in the preface expressed a hope that he should be enabled to present to the public a complete edition of Lord Hale's works; a design which, unfortunately, has never been completed. [Note 36.]

The zeal with which Sir Matthew Hale availed himself of every opportunity to increase the stores of his professional knowledge is evinced by the rare and curious collection of MSS., relative to the law, which he accumu-

lated, at great expense, in his lifetime, and which on his death he bequeathed to the library of Lincoln's Inn. The purchase and transcription of these MSS. are said to have cost him upwards of 1500*l.*; a very large sum of money to be expended in those days by one who owed his fortune to his professional exertions.

As a scholar, Sir Matthew Hale distinguished himself by the composition of various works, some of which were published in his lifetime, and others after his decease. His chief study was theology, to which he devoted the principal leisure hours of his active and laborious life. His great work, *The primitive Origination of Mankind considered and examined according to the Light of Nature,* has been variously judged. His *Contemplations moral and divine* excited the admiration of Wilkins and of Tillotson. [Note 37.] He was the author of two or three scientific tracts, which must be judged with a reference to the then state of physical knowledge. His classical attainments were not considerable. His knowledge of Greek appears to have deserted him by disuse, and his translation of the Life of Atticus does not afford any favourable specimen of his critical knowledge of the Latin.* His English style was powerful and copious, sometimes to a fault. His poetical compositions, in which he occasionally indulged, on religious subjects, possess very little merit. His style of speaking was slow and sometimes embarrassed, but occasionally he rose into eloquence. "His stop," says the Honourable Roger North, "by the produce always paid for the delay, and on some occasions he would utter sentences heroic."†

In private life the character of Hale was calculated to attract the love and reverence of his friends. Of a modest and retiring disposition, he appears to have shunned society, and thus fell under the unjust imputation of admitting none but flatterers to his presence. In his family he was not happy. His sons disgraced themselves by their profligate lives, and in the decline of life

* Life of Lord Guilford, vol. i. p. 123. † Id. p. 120.

he himself married one of his own servants.* To his inferiors he was always liberal and considerate, and extended his kindness even to the animals that had faithfully served him. His charities were most extensive. In his friendships he was very fortunate, enjoying the conversation and good opinion of Selden, and of Vaughan, of Ward, Barrow, Tillotson, Wilkins, and Stillingfleet, and, amongst the dissenters, of the celebrated Baxter.

LORD KEEPER GUILFORD.
1640—1685.

THERE does not, perhaps, exist in English literature a more singular and characteristic piece of biography than the life of the Lord Keeper Guilford, by his younger brother, the Honourable Roger North. The ardent affection of the author for his distinguished relative, his intimate acquaintance with the transactions which he records, his stores of anecdote relating to his contemporaries, and the indescribable *naivete'* of his style, confer a peculiarly interesting character upon his book. To abridge such a narrative, to despoil the picture of the author's peculiar colouring, and to relate the history in other language, must be to destroy nearly all the interest which attaches to the original. In the following memoir, therefore, an attempt is made to preserve, where it is possible, the language of the biographer.

Francis North, afterwards Baron Guilford and Lord Keeper of the Great Seal, was the second son of Dudley Lord North, Baron of Kertling, in Cambridgeshire, and Knight of the Bath. He received his earliest education under a schoolmaster of the name of Wallis, at Isleworth, a rigid presbyterian, whose wife, a zealous independent, "used to instruct her babes in the gift of praying by the spirit." "All the scholars," says the biographer, "were made to kneel by a bedside and pray; but this petit

* Life of Lord Guilford, p. 124.

spark was too small for that posture, and was set upon the bed to kneel with his face to a pillow; and in this exercise of spiritual prayer they had their directions from her. I have heard his lordship say, that all he could remember of his performance was praying for his distressed brethren in Ireland." After passing some years at another school of the same kind, young North was removed to Bury school, then under the superintendence of Dr. Stevens, "a cavalier master." From Bury, his next step was to the university, where he became a Fellow Commoner of St. John's College, Cambridge, on the 8th June, 1653. During his residence there, he applied himself principally to mathematics and natural philosophy, in which he made considerable progress. Being destined for the bar, he was, on the 27th November 1665, admitted a student of the Middle Temple; and although his retiring disposition rendered him at first averse to the profession, he commenced his studies with much zeal and earnestness. "He used constantly the commons in the hall, at noon and at night, and fell into the way of putting cases (as they call it), which much improved him, and he was very good at it, being of a ready apprehension, a nice distinguisher, and prompt speaker. He used to say, that no man could be a good lawyer that was not a good put-case." He commonplaced largely, and studied with great diligence the year-books and the elder writers of the law. His appearance and character at this period of his life are thus described by his brother.

"He was of low stature, but had an amiable ingenuous aspect, and his conversation was answerable, being ever agreeable to his company. His hair grew to a considerable length, but was hard and stiff, and did not fall as the rest of the family, which made it bush somewhat, and not without a mixture of red and grey. As to his humour, he was free from vanity himself, and hated it in others. His youthful habits were never gay or topping the mode, like other inns of court gentlemen, but always plain and clean, and showed somewhat of firm-

ness or solidity beyond his age. His desire was rather not to be seen at all, than to be marked by his dress. In these things to the extreme was his aim; that is, not to be censured for a careless sloven, rather than to be commended for being well dressed. But as to his appearing in public, the composition of his temper was extraordinary, for he had wit, learning, and elocution, and knew it, and was not sensible of any notable failings wherewith to accuse himself, and yet was modest even to a weakness. I believe, a more shame-faced creature than he was never came into the world; he could scarce bear the being seen in any public places. I have heard him say, that when he was a student, and ate in the Temple hall, if he saw any company there, he could not walk in till other company came, behind whom, as he entered, he might be shaded from the view of the rest. And he used to stand dodging at the screen till such opportunity arrived, for it was death to him to walk up alone in open view.

"His loose entertainments in this stage were, as usual with gentlemen cadets of noble families in the country, sporting on horseback, for which there was opportunity enough at his grandfather's house, where was a very large and well-stocked deer-park, and at least twice a week in the season there was killing of deer. The method then was for the keeper with a large cross-bow and arrow to wound the deer, and two or three disciplined hounds pursued till he dropped. There was most of the country sports used there for diverting a large family, as setting, coursing, bowling, and he was in it all; and within doors, backgammon and cards, with his fraternity and others, wherein his parts did not fail him, for he was an expert gamester. He used to please himself with raillery, as he found any that by minority of age or majority of folly and self-conceit were exposed to be so practised upon. I could give instances enough of this sort, and not unpleasant, if such trifles were to be indulged in a design such as mine is. His most solemn entertainment was music, in which he was not only

master but doctor. This for the country, where, to make good his exhibition, he was contented (though, in truth, forced) to pass the greater part of his time. But in town he had his select of friends and acquaintance, and with them he passed his time merrily and profitably, for he was as brisk at every diversion as the best. Even after his purse flowed sufficiently, a petit supper and a bottle always pleased him. But he fell into no course of excess or vice, and whenever he was a little overtaken, it was a warning to take better care afterwards; and against women his modesty was an effectual guard, though he was as much inclined as any man, which made him desirous to marry."

On the 28th of June, 1661, Mr. North was called to the bar, and applied himself diligently to practice. His income at this period consisted only of 60*l.*, allowed by his father, and afterwards reduced to 50*l.*, and 20*l.* from his grandfather. He attended the courts with assiduity, and being much noticed and encouraged by the attorney-general, Sir Geoffrey Palmer [Note 38.], he soon began to find himself engaged in practice. He was employed by Palmer to search the authorities for him, and as he sometimes appeared for him when the attorney was prevented by illness, he was addressed by Jones (afterwards Sir William Jones) by the title of Mr. Deputy-Attorney.

The first opportunity which Mr. North enjoyed of distinguishing himself in public was in arguing the writ of error, brought on the conviction of Hollis and the other five members, in the reign of Charles I. His argument on this occasion at the bar of the lords, though unsuccessful, was so highly regarded by the court, that, notwithstanding his youth, it was resolved to confer upon him the rank of king's counsel. Jealous of the distinction thus conferred upon so young a man, the benchers of the Middle Temple refused to call him to the bench of the society, in consequence of which Mr. North after some delay thought fit to complain to the judges, who, upon the appearance of some of the benchers

in court, administered a severe rebuke to him, upon which he was elected a bencher on the 5th of June 1668.

The circuit selected by Mr. North was the Norfolk; and, although at first he did not receive much encouragement, "his resolution was to persevere, knowing success in circuit business to be a cardinal ingredient in a lawyer's good fortune." He displayed that discretion by which he was distinguished, in being "exceeding careful to keep fair with the cocks of the circuit, and particularly with Serjeant Earl, who had almost a monopoly." —"If he was concerned as counsel, he stood in great awe of the chief practisers; for they, having the conduct of the cause, take it ill if a young man blurts out any thing, though possibly to the purpose, because it seems to top them; and, sometimes, if it do not take with the court, throw up, saying, *the cause was given away;* which almost blasts a young man. Therefore, when he thought he had a significant point to offer, he first acquainted the foreman with it, which was commonly well taken; and he in return would say, *move it yourself,* and then he seconded it." Some appointments which he received shortly after he was called to the bar contributed to extend his reputation. He was put into the commission for draining the fens; constituted judge of Ely; and made one of the king's counsel before the justices in eyre. His practice now rapidly increased, and he became one of the most rising men in Westminster Hall. His mode of life at this period is thus sketched by his biographer:—

"His lordship's course of life, while he was in great business, was most philosophical, till he was solicitor-general and married, and then he kept house, and at meals scarce ever failed his family; but before, he used the commons in the hall at dinner personally, and at night in his chamber. And when he was out of commons, the cook usually provided his meals; but at night he desired the company of some known and ingenious friends, to join in a costelet and a salad at Chuttelin's, where a bottle of wine sufficed, and the company dressed

their own feast, that consisted in friendly and agreeable conversation. But in terms, and while business was stirring, he kept his chamber, because (in order to next day's work) the attornies and agents came in at all hours; and then he desired the company of a friend or two, that, in the intervals of taking instructions, he might come out and solace with them a little, and return when he was summoned. And the repast among us all was only his commons and a single bottle: but what is that to the feast I mentioned, which was never wanting? When his practice was but little, and for the most part when he was a student, he made it a rule not to leave his chamber before eight at night; and if he had no appointed company, he hath often taken me to walk about in the gardens with him till bed-time; for he never loved at such times to be alone, but having any company he could discharge his thoughts by discourse. After he was of the king's counsel he kept a coach, and at leisure times used to air himself in that, but with a friend to receive his discourse and give handles for more. But while I was with him, which was first while Sir Geoffrey Palmer was but just alive, I cannot say I ever knew him to have been twice at any tavern."

On the death of Sir Geoffrey Palmer, the attorney-general, and the promotion of the solicitor-general, considerable interest was made by Mr. North's friends to procure for him the vacant office. On the other hand, the Duke of Buckingham solicited the place for Jones (afterwards the attorney-general); but the king "could not be brought to dash cold water in Mr. North's face" by the appointment of Jones, and the office was conferred upon Sir Edward Turner. A few months afterwards, Sir Edward being made chief baron, Mr. North was appointed to succeed him as solicitor-general; and, according to custom, received the honour of knighthood. In his new capacity Sir Francis North was frequently obliged to appear in the court of chancery, and ultimately he relinquished his practice in the king's bench, and confined himself to the former court.

His success in his profession, and the consequent increase of his fortune, now led the thoughts of Sir Francis to the subject of matrimony. "After he was called to the bar," says his brother, "he applied himself closely to the attendance and operations of the law, and wanted refreshment such as was reasonable to be enjoyed at vacant times; and he was weary of being at the loose hand as to company, which he could not have at all times to his mind. He was no clubster, listed among good fellows; and often passed his evenings in walking, or solitary (if it may be so termed when he had only me with him), rather than join in any promiscuous society, or of such as were not either in his friendship or distinguished by some notable talents that recommended them. And he thought it would be an ease to his mind to know continually, after his business done, what was to become of him; and that he thought best provided for by a family and housekeeping, which is never well settled without a mistress as well as a master of a family. These considerations inclined him to look out for a suitable match. And, to say truth, his constitution required it as much as any man's whatsoever; but being excessive modest, and by resolution virtuous, he was solicitous and ardent in the pursuit of it, and not a little encouraged by a manifest feeling he had of success in his profession, which dismissed all fears of the lean wolf. And not being insensible of a fair character in general, which together with some quality and happy relation that fell to his share, he fancied he might pretend to as good a fortune in a match, as many others had found who had less reason to expect it; but without some advancement in that way he was not disposed to engage himself.

"That which sat hardest upon his spirits was, how he should give a fair answer to the question, 'What jointure and settlement?' He used to own but one rood of ground in the world that yielded him any profit, which was Westminster hall; a meagre particular, unless he might have added, as Finch did, his bar-gown 20,000*l*. There came to him a recommendation of a

lady who was an only daughter of an old usurer of Gray's Inn, supposed to be a good fortune in present, for her father was rich, but after his death to become worth nobody knew what. His lordship got a sight of the lady, and did not dislike her: thereupon he made the old man a visit, and a proposal of himself to marry his daughter. There appeared no symptoms of discouragement, but only the old gentleman asked him what estate his father intended to settle on him for present maintenance, jointure, and provision for children. This was an inauspicious question, for it was plain that the family had not estate enough for a lordship, and none could be to spare for him. Therefore, he said to his worship only "That when he would be pleased to declare what portion he intended to give his daughter, he would write to his father, and make him acquainted with the answer." And so they parted, and his lordship was glad of the escape, and resolved to give that affair a final discharge, and never to come near the terrible old fellow any more. His lordship had at that time a stout heart, and could not digest the being so slighted, as if in his present case a profitable profession and future hopes were of no avail. If he had had a real estate to settle, he should not have stooped so low as to match with his daughter, and thenceforward despised his alliance.

"His lordship's next amour was in all respects better grounded; but, against all sense, reason, and obligation, proved unsuccessful. When Mr. Edward Palmer, his lordship's most intimate and dear friend, died, he left a flourishing widow, and very rich. The attorney-general and all his family had projected a match of their cousin North with this lady, who were no strangers to each other; nor were there wanting sufficient advices, or rather importunities of the whole family, for her to accept him; against which she did not seem to reluct, but held herself very reserved. In the meantime his lordship was excited to make his application, which he had never done, or at least not persisted, so long as he did, but out of respect and compliance with the sense of that worthy family,

which continually encouraged him to proceed. Never was lady more closely besieged with wooers. She had no less than five younger brothers sat down before her at one time; and she held them in hand, as they say, giving no definitive answer to any of them, till she cut the thread; and, after a clancular proceeding and match with a jolly knight of a good estate, she dropped them all at once, and so did herself and them justice. There were many comical passages in this wooing, which his lordship without much pleasantry used to remember, and, however fit for a stage, would not muster well in an historical relation; for which reason, as his lordship was dropped, I drop them. The unhappiness was, that he could never find out her resolution as to him; for she stood in some awe of Sir Geoffrey Palmer's family, and would not break with them till she had provided for herself another interest; and his lordship would not slight their excessive kindness to him by deserting his post at which they had placed him; so, between the one and the other, he was held at the long saw for above a month, doing his duty as well as he might, and that was but clumsily, for he neither dressed nor danced; when his rivals were adroit at both, and the lady used to shuffle her favours amongst them affectedly, and on purpose to mortify his lordship, and at the same time be as civil to him, with like purpose to mortify them: and his lordship was not so mystified by his amour as not to discern these arts; and nothing but the respects I hinted could have held him in harness so long. For it was very grievous to him, that had his thoughts upon his clients' concerns, which came in thick upon him, to be held in a course of bo-peep play with a crafty widow. And I have heard him often say, that he never was in all his life more rejoiced than when he was told that madam was married, whereby he was escaped from a miserable confinement. And the fastidium upon this occasion contracted, and his increase of business, which gave him little time to think of any thing else, diverted

his mind from undertaking any more of such projects, and so he went on his way.

"Another proposition came to his lordship by a city broker from Sir John Lawrence, who had many daughters, and those reputed beauties, and the fortune was to be 6000*l.* His lordship went and dined with the alderman, and liked the lady, who (as the way is) was dressed out for a muster. And coming to treat, the portion shrank to 5000*l.*; and upon that his lordship parted, and was not gone far, before Mr. broker (following) came to him, and said, Sir John would give 500*l.* more at the birth of the first child; but that would not do, for his lordship hated such screwing. Not long after this despatch, his lordship was made the king's solicitor-general, and then the broker came again with news, that Sir John would give 10,000*l.* No! his lordship said, after such usage he would not proceed if he might have 20,000*l.* So ended that affair, and his lordship's mind was once more settled in tranquillity.

"It is said that marriages are made in heaven, and if frequent and unforeseen accidents (often to be observed productive of them) are any argument, the proverb hath countenance; for so it happened in his lordship's case, for out of a contingent interview, a proposition sprang pregnant with all advantages of honour, person, and fortune, more than which was not to be desired or expected. And it was for a match with the Lady Frances Pope, the middle daughter of three co-heirs of Thomas, Earl of Down, who lived at Wroxton, in Oxfordshire. The eldest was married to Mr. Soames, of Thurlow, in Suffolk, within four miles of Catledge, the seat of his lordship's father. And, as the use is, the grave Countess of Down, with her two younger daughters, attended the new-married couple to their habitation, and made some stay there; during which the visits of joy came in, and amongst the rest the family from Catledge made their appearance; and the countess and her daughters in due time made their return, which happened to be at a time

when his lordship was at Catledge. His mother laid her eyes upon the eldest unmarried daughter, and when they were gone, turned about and said, 'Upon my life this lady would make a good wife for my son Frank.' And, in short, at the next visit, with his lordship's fair consent, she moved it to the countess, who consented that his lordship might make his advances. His next business was to muster what sum of money he could, in order to make an honourable proposition, and with 600*l.* borrowed of a friend, he could compass but 6000*l.* in all to join to her fortune, which was estimated at 14,000*l.* for making the jointure and settlement intended to be 1000*l. per annum.* After this he ventured down with a decent equipage and attendance, and in less than a fortnight fixed his point with the lady, and appointed another time to come and finish what was so auspiciously begun. And then his lordship went with full attendance and some friends, and after the necessary meetings were sealed, the lovers were happily married in Wroxton church."

While Sir Francis North held the office of solicitor-general, he was returned to parliament as member for Lynn; but he had neither the inclination nor the leisure to devote himself to parliamentary business. On the promotion of Sir Heneage Finch to the woolsack, Sir Francis succeeded him as attorney-general, and his practice, which had before been very considerable, now received a sensible increase.

"His business increased, even while he was solicitor, to be so much as would have overwhelmed one less dexterous; but when he was made attorney-general, though his gains by his office were great, they were much greater by his practice, for that flowed upon him like an *orage*, enough to overset one that had not extraordinary readiness in business. His skull-caps, which he wore when he had leisure to observe his constitution, as I touched before, were now destined to lie in a drawer to receive the money that came in by fees: one had the gold, another the crowns and half-crowns, and another the smaller

money. When these vessels were full, they were committed to his friend (the Hon. Roger North), who was constantly near him, to tell out the cash and put it into bags according to the contents, and so they went to his treasurer's, Blanchard and Child, goldsmiths, Temple-bar."

Even at this busy period of his life, Sir Francis North did not neglect his more liberal studies, and acquired a general knowledge of the modern languages, French, Italian, and Spanish, and even made some progress in the study of the Dutch. In the pursuit of his professional knowledge he was as diligent as ever, noting down in "his solemn common-place book" every matter of importance, and making a copious index of any valuable treatise in MS. which fell in his way. To preserve his knowledge of real property law, he was accustomed every Christmas to peruse Littelton's Tenures.

On the death of Sir John Vaughan, the chief justice of the common pleas, Sir Francis North was promoted to the vacant dignity. The leisure and ease which this change procured him compensated for the pecuniary loss which he sustained by it, his profits as attorney-general being about 7000*l.* per annum, while the office of chief justice produced only 4000*l.* One of the first acts of the new chief justice was to introduce the clause of *ac etiam* into the process of the common pleas, in accordance with the alteration lately made in the king's bench, by which the practice of the former court was considerably increased. Upon another matter of practice he had the misfortune to offend the bar of his court; an incident which is thus related by his biographer: —

"There was an incident that happened not long after his lordship came into the place of chief in that court, which, though in itself and in the end of it ridiculous, yet being an affront to the court, and in particular to the lord chief justice, and by the whole bar of serjeants, all in a lump together, ought to be related, as I shall do, really as it was acted by them. It hath been the usage of the king's bench, at the side bar below in the hall, and of the common pleas, in the chamber within the treasury, to

hear attornies and young counsel that came to move there about matters of form and practice. His lordship had a younger brother (Hon. Roger North), who was of the profession of the law: he was newly called to the bar, and had little to do in the king's bench; but the attornies of the common pleas often retained him to move for them in the treasury such matters as were proper there, and what they might have moved themselves. But, however agreeable this kind of practice was to a noviciate, it was not worthy the observation it had, for once or twice a week was the utmost calculate of these motions. But the serjeants thought that method was or might become prejudicial to them, who had a monopoly of the bar, and would have no water go by their mill, and supposed it was high time to put a stop to such beginnings, for fear it might grow worse. But the doubt was, how they should signify their resentment so as to be effectually remedied. At length they agreed for one day to make no motions at all, and opportunity would fall for showing the reason how the court came to have no business. When the court (on this dumb day, as it was called) was sat, the chief justice gave the usual signal to the eldest serjeant to move. He bowed, and had nothing to move; so the next, and the next from end to end of the bar. The chief, seeing this, said, 'Brothers, I think we must rise, here is no business.' Then an attorney steps forwards, and called to a serjeant to make a motion, and after that turned to the court and said, that he had given the serjeant his fee and instructions over-night to move for him, and desired he might do so. The chief looked about, and asked what was the matter? An attorney that stood by, very modestly said, that he feared the serjeants took it ill that motions were made in the treasury. Then the chief scented the whole matter: and, 'brothers,' said he, 'I think a very great affront is offered to us, which we ought for the dignity of the court to resent. But that we may do nothing too suddenly, but take consideration at full leisure and maturely, let us now rise, and to-morrow morning give order as becomes us. And do you, attornies, come all here to-

morrow, and care shall be taken for your despatch; and rather than fail, we will hear you or your clients, or the barristers at law, or any person that thinks fit to appear in business, that the law may have its course; and so the court rose. This was like thunder to the serjeants, and they fell to quarrelling one with another about being the cause of this great evil they had brought upon themselves; for none of them imagined it would have had such a turn as this was, that shaked what was the palladium of the coif, the sole practice there. In the afternoon they attended the chief and the other judges of the court, and in great humility owned their fault, and begged pardon, and that no farther notice might be taken of it, and they would be careful not to give the like offence for the future. The chief told them that the affront was in public and in the face of the court, and they must make their recognitions there next morning, and in such a manner as the greatness of their offence demanded, and then they should hear what the court would say to them. Accordingly they did; and the chief first, and then the rest in order, gave them a formal chiding with acrimony enough; all which with dejected countenances they were bound to hear. When this discipline was over, the chief pointed to one to move, and which he did (as they said) more like one crying than speaking; and so ended the comedy as it was acted in Westminster hall, called the Dumb Day."

The conduct of Sir Francis North while upon the bench was in many points worthy of great commendation. Like Sir Matthew Hale, he applied himself to the reformation of the abuses which existed in the law; his mode being to note down the point which appeared to require amendment; and afterwards, when at leisure, to reduce his observations into such a form that an act of parliament might be founded on them. It is supposed by his biographer, that the first idea of the statute of frauds proceeded from him; and he also asserts, that several other alterations, which afterwards passed into laws, arose from his suggestions. [Note 39.] Another

proposal of the chief justice was a general register for lands; a scheme upon which "he worked sincerely." He had proceeded so far in these proposed amendments as to prepare several draughts of bills, which, after his death, were found amongst his papers. In presiding at the trial of causes the chief justice exerted himself to confine the counsel to the point in question, and to cut down that redundancy of speech, which, he used to observe, "disturbed the order of his thoughts." "He was," says his biographer, "very good at waylaying the craft of counsel; for he, as they say, had been in the oven himself, and knew where to look for the pasty." Upon one difficult occasion his conduct on the bench was entitled to the highest commendation. "At Taunton Dean," says Roger North, "he was forced to try an old man for a wizard; and for the curiosity of observing the state of a male witch or wizard, I attended in the court, and sat near where the poor man stood. The evidence against him was, the having bewitched a girl of about thirteen years old: for she had strange and unaccountable fits, and used to cry out upon him and spit out of her mouth straight pins; and whenever the man was brought near her, she fell in her fits, and spit forth straight pins. His lordship wondered at the straight pins, which could not be so well couched in the mouth as crooked ones; for such only used to be spit out by people bewitched. He examined the witnesses very tenderly and carefully, and so as none could collect what his opinion was; for he was fearful of the jurymen's precipitancy, if he gave them any offence. When the poor man was told he must answer for himself, he entered upon a defence as orderly and well expressed as I ever heard spoke by any man, counsel or other; and if the attorney-general had been his advocate, I am sure he could not have done it more sensibly. The sum of it was malice, threatening, and circumstances of imposture in the girl; to which matters he called his witnesses, and they were heard. After this was done, the judge was not satisfied to direct the jury before the im-

posture was fully declared; but studied and beat the bush while, asking sometimes one and then another question, as he thought proper. At length he turned to the justice of peace that committed the man and took the first examinations. 'And, sir,' said he, 'pray will you ingenuously declare your thoughts, if you have any, touching these straight pins which the girl spit; for you saw her in her fit?' —'Then, my lord,' said he, 'I did not know that I might concern myself in this evidence, having taken the examination and committed the man. But since your lordship demands it, I must needs say, I think the girl, doubling herself in her fit as being convulsed, bent her head down close to her stomacher, and with her mouth took pins out of the edge of that, and then, righting herself a little, spit them into some bystander's hands.' This cast an universal satisfaction upon the minds of the whole audience, and the man was acquitted. As the judge went down stairs out of the court, a hideous old woman cried, 'God bless your lordship!'—What's the matter, good woman?' said the judge.—'My lord,' said she, 'forty years ago, they would have hanged me for a witch, and they could not, and now they would have hanged my poor son!'"

On the trial of Colledge* for high treason, the conduct of North, who presided as one of the judges, has been the subject of severe and just observation. Certain papers belonging to the prisoner, and containing the heads of his defence, and suggestions relative to the proceedings, furnished to him by his legal advisers, had been forcibly taken from him, previously to his coming into court. He applied with great earnestness for their restoration; but the court, having perused them, denied the request, on the frivolous and ridiculous ground that they contained matter scandalous to the government. Colledge, therefore, was only permitted to have the use of such portions of the documents as the judges were pleased to consider unexceptionable. His assertions, that without the assistance of his instructions he should not be en-

* State Trials, vol. viii. p. 549.

abled to conduct his defence, were met by a pertinent answer from Sir Francis North — that the judges were his counsel. A maxim which is, indeed, admirably illustrated by the trial in question.

Upon the experiment, made under the auspices of Sir William Temple, of a Whig administration, Sir Francis North was constituted a member of the privy council. A government formed so entirely in opposition to the king's dearest prejudices had little chance of stability; nor was it probable that the chief justice would act cordially with Shaftesbury, and Essex, and Russell. But the time was now approaching when he was to assume a still higher station.

The health of the Lord Keeper Finch having given way, the business of the cabinet which usually came before him was for the most part performed by Sir Francis North, who thus, in case of Finch's death, seemed evidently pointed out as his successor. When that event took place, he received an intimation, as his biographer supposes, from Lord Rochester, the lord treasurer, that the seals were within his grasp. The object of this hint is supposed to have been to induce the chief justice to prefer a petition for the vacant woolsack, that so the seals might be offered to him with a better grace, without the addition of a pension. But Sir Francis was not easily misled. He clearly foresaw that the office must be tendered to him, and he fully resolved not to accept it without such a pension as should enable him to support the dignity in such a manner as he deemed suitable. Rochester and he now endeavoured to outwit one another; but the chief justice was not "a chicken that would peck at shadows;" and ultimately the king placed the seal in his hands, with this warning sentence:—"Here, my lord take it; you will find it heavy!" To this appointment was added a pension of 2000*l.* a year. It is curious to observe what were the feelings of Sir Francis North after receiving the highest reward which his profession could confer.

"The evening that we went upon this errand to Whitehall," says Roger North, "some of us stayed in expectation of his coming home, which was not till near ten; little doubting the change that was to happen. At last he came with more splutter than ordinary, divers persons (for honour) waiting, and others attending to wish him joy, and a rabble of officers that belonged to the seal completing the crowd which filled his little house. His lordship, by despatching these incumbrances, got himself clear as fast as he could, and then I alone stayed with him. He took a turn or two in his dining-room and said nothing, by which I perceived his spirits were very much roiled; therefore I kept silence also, expecting what would follow. There was no need of asking what news when the purse with the great seal lay upon the table. At last his lordship's discourses and actions discovered that he was in a very great passion, such as may be termed agony, of which I never saw in him any like appearance since I first knew him. He had kept it in long, and after he was free it broke out with greater force, and, accordingly, he made use of me to ease his mind upon. That which so much troubled him, was the being thought so weak as to take ill usage from those about the king (meaning the Earl of Rochester), with whom he had lived well, and ought to have been better understood. And instead of common friendship, to be haggled withal about a pension, as at the purchase of a horse or an ox, and after he had declared positively not to accept without a pension, as if he were so frivolous to insist and desist all in a moment, and, as it were, to be wheedled and charmed by their insignificant tropes; and, what was worse than all, as he more than once repeated, 'to think me worthy of so great a trust, and withal so little and mean as to endure such usage as was disobliging, inconsistent, and insufferable. What have I done,' said he, 'that may give them cause to think me of so poor a spirit as to be thus trifled with?' And so on with much more of like animosity,

which I cannot undertake to remember. And, after these exhalations, I could perceive that by degrees his mind became more composed."

Upon taking his seat in the court of chancery, the first object of the lord keeper was to reform, so far as lay in his own power, the abuses of the court. "The greatest pain he endured," says his biographer, "moved from a sense he had of the torment the suitors underwent by the excessive charges and delays of the court; for the easing of whom he was always in thought more or less, to contrive ways and means of expedition and retrenchment of charges." The variety of opposing interests rendered this a difficult task; but the lord keeper proposed to accomplish it gradually, without alarming the officers of the court by the introduction of a sudden and violent reform. "As occasion proffered, he declared his mind, and retrenched many superfluities, or rather nuisances, in the court." One of his first measures was to put an end to the innumerable motions for speeding or delaying the hearing of causes. [Note 40.] His next attempt was to reform the practice with regard to the masters' reports. "His lordship also," says Roger North, "set himself to stop the superfetation of orders: and they were a subject of his daily reprehension; for the causes often came to a hearing with a file of orders in the solicitor's bundle as big as the Common Prayer-Book, for commissions, injunctions, publications, speedings, delayings, and other interlocutories, all dear ware to the client in every respect. But in a few terms his lordship reduced the quantities, for he was strict to the observance of his rules; and for the most part refused to make orders *nisi*, &c., as commonly was prayed, when notice was not given of the motion." Much delay was also prevented by refusing rehearings and re-references except upon the most substantial cause. Lastly, the state of the register's office engaged his lordship's attention; but he found it very difficult "to break the neck of those wicked delays used there." It is not improbable, that if the lord keeper had held the seals a few

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years longer, he would have published a book of orders; which, as his biographer observes, "would have gone a great way towards purging out the peccant humours of the court." During his administration in the court of chancery, the lord keeper was not altogether free from suspicion of that corruption which was unfortunately not very rare at that period*; but there appears to be no sufficient foundation for such imputations.

At the period when the lord keeper ascended the woolsack, he found an administration with whose views, for the most part, he concurred. But on the accession of Sunderland and Godolphin, and more especially of the Lord Chief Justice Jefferies, to the cabinet, the position of the lord keeper became a very painful one. Being himself a resolute protestant, he ran counter to the designs of the other ministers; who, better acquainted than himself with the secret wishes of the king, were desirous of pushing the prerogative to its greatest extent, in defence of the persecuted papists. Accordingly, on a motion made by Jefferies to grant a general pardon to the imprisoned recusants, the lord keeper was the only member of the cabinet who opposed the design. "That night," says his biographer, "his lordship came home full of melancholy; and it was some time before any person near him knew the occasion of it. But he would sometimes break out in exclamations, as—'What can be the meaning! Are they all stark mad?' and the like." The policy observed by the lord keeper at court was that of the old English Tory; and he looked with great jealousy upon those intemperate advisers who would have persuaded the king to resort to measures of violence.

His mode of life at this period is thus described by his brother: —"His lordship's method of living, with respect to his great employment, was very commendable; for all his time was devoted to the business incumbent on him. He put but very little of it to his own use; and what passed in easy conversation, which was the

* See the Lives of the Chancellors, vol. i. p. 178.

chief of his pleasures, had still a regard to his employ, by enquiring, canvassing, and debating, with those of his society, such points as concerned the republic. He had no kind of vice or immorality within his walls; and of what sort his remissions were (for some are necessary to life) I shall give a fuller account afterwards. But it is decent here to name the chief, which was a solitary, or rather speculative, use of music, of which he commonly took a relish at his going to bed; for which end he had a harpsichord at his bedchamber-door, which a friend touched to his voice. But he cared not for a set of masters to consort it with him. And, unless it were once under Purcell's conduct, I never knew him use such; for there was somewhat stiff in that way that was not easy. The mornings were for the most part devoted to the justice-seat of the chancery, either in the court at Westminster or in the cause-room at home, during the usual periods, and not seldom in attendances upon petitions, and despatching the perpetual emergencies of the seal. His house was kept in state and plenty, though not so polite as the court-mode was. The nobility and chief gentry coming to London were frequent at his table: and after a solemn service of tea in a withdrawing room, the company usually left him; and then the cause-room claimed him, and held him in pain with causes and exceptions often till late. He had little time to himself, for he had this infirmity, that he could not bear to make any one wait; but if his servant told him of any person, great or small, that waited without, he could not apply to think of or do any thing till he had despatched him. The interval between the business of the day and going to bed was his chief refreshment, for then his most familiar friends came to him, and the time passed merrily enough: and then it was that the court-spies found access to plumb his most free sentiments, but with small profit, for he had the same face and profession in public as he had in private; they could discover only that he was an honest man: but more of this elsewhere. His attendances at Whitehall were

chiefly at solemn times, as on Sunday morning to wait on the king to chapel. That was usually a grand assembly of the court, and the great men had opportunity to speak in discourse to the king as he gave them occasion, of which his majesty was no niggard; and very excellent things said there on the one side and on the other were a high regale to such as had the advantage to stand within hearing. On the week-days, those called council-days always, and sometimes committees of council, required his lordship's attendance; and Thursday was always public; others for private business upon summons."

On the death of Charles II. the prospects of the lord keeper suffered a material change. "With the death of this good master and sovereign all his lordship's hopes and joys perished; and the rest of his life, which lasted not long after, was but a slow dying." Although on the accession of James there was no appearance of displacing him, yet it was obvious to an accurate observer, that he could not, for any long space of time, be allowed to retain both the seals and the principles which he had hitherto professed. His unfitness for the part which it was expected he should act soon became apparent. On the question as to the levying of the tonnage and poundage, which had only been granted to the crown during the life of Charles II., the Lord Chief Justice Jefferies advised the king to issue a proclamation, commanding the collection and payment of the tax as before. To this proposition, so clearly illegal, the lord keeper would not consent, but proposed a course which, though not strictly constitutional, yet bore some semblance of a regard for the laws. He advised that the proclamation should require the duties to be collected and paid into the exchequer, there to await the disposal of parliament. "But it seems," says Roger North, "that this was too low and trimming for the state of the court at that time, and a positive proclamation issued." Upon another occasion the lord keeper rendered himself still more obnoxious to the court. At the elections for the

new parliament he employed not only his private interest, but that which his office gave him, in procuring the nomination of persons ill calculated to forward the views of the sovereign. "His lordship's design was to have the parliament truly church of England protestants, and loyal to the crown; which character he thought aptest to establish the religion and laws of the kingdom, and to resist all attempts of altering any of our fundamentals in church and state." The displeasure of the court at this line of conduct was manifested on the opening of parliament, when the lord keeper, contrary to usual custom, was not permitted to prepare the king's speech, nor was he even consulted on that which was delivered. The feelings of a king are speedily communicated to his courtiers, and the lord keeper soon found himself in general discredit. His decrees were questioned, or, as his biographer expresses it, "most brutishly and effrontuously arraigned:" while at court and at council "nothing squared with his schemes;" and he was, "by Sunderland, Jefferies, and their complices, little less than derided."—Declining thus in favour at court, disturbed with the measures which he there beheld in contemplation, harassed with the thankless toils of office, the lord keeper, dispirited and depressed, was unable to contend with the adverse circumstances by which he was surrounded. He was attacked by a severe illness, which yielded at last, in some degree, to medicine, and he resumed his duties for a short time. But the fever from which he was suffering appears never to have been thoroughly subdued; and the following is the melancholy picture given by his brother of his state at this period:—"His feverish disease growing upon him, his spirits, and all that should buoy a man up under oppression, not only failed, but other things of a malign complexion succeeded to bring him lower: which may be fully understood by this circumstance. He took a fancy that he looked out of countenance, as he termed it; that is, as one ashamed, or as if he had done ill, and not with that face of authority as he used to bear; and for that reason, when he went

into Westminster hall, in the summer term, he used to take nosegays of flowers to hold before his face, that people might not discern his dejection; and once in private having told me this fancy, he asked me if I did not perceive it. I answered him, not in the least, nor did I believe any one else did observe any such thing; but that he was not well in health as he used to be was plain enough. His lordship in this state took a resolution to quit the great seal, and went to my Lord Rochester to intercede with his majesty to accept it, which had been no hard matter to obtain. But that noble lord had no mind to part with such a screen, and at that time (as he told me himself) he diverted him. But his lordship persisted, as will be made appear afterwards, by a letter. Whereupon the Lord Rochester obtained of the king, that his lordship might retire with the seal into the country; and that the officers with their concerns should attend him there, in hopes that by the use of the waters and fresh air he might recover his health against next winter, when it was hoped he would return perfectly recovered. This was indeed a royal condescension and singular favour to him."

The hopes of a recovery were vain. The lord keeper retired to Wroxton, in Oxfordshire, where he lingered some time, suffering much in body and temper from the effects of his disease. The closing scene of his life is thus described by his brother: —

"It was the opinion of the people about him, and the doctor's desire (who was the most afflicted man in the world), that Doctor Radcliffe, then in the neighbourhood, should be called in, which was done; not that his friends expected any benefit, but to satisfy some of the living, who would not be convinced. The doctor came; and by his lordship's bed-side he asked him I am sure no less than fifty questions, which were a fatigue and trouble to him, and all that were in the room. The doctor had his fee, but not the ingenuity to say what he knew, viz. that there were no hopes; but talked of the lungs being touched or not, which signified nothing.

His lordship afterwards showed much discontent that he was not well attended; and if Sir Dudley North or I was absent, he called it slighting him; and we were, indeed, glad sometimes to escape for half an hour to breathe. This confirmed the approach of death, of which the not caring to be left alone is a constant symptom. He began to agonise and be convulsed; and by virtue of the doctor's cordials lived longer than was for his good. After some striving, he would lie down, and then get up again. He advised us not to mourn for him; yet commended an old maid-servant for her good will, that said, 'As long as there is life there is hope.' At length, having strove a little to rise, he said, 'It would not do;' and then with patience and resignation lay down for good and all, and expired [5th] Sept. 1685."

On the following day the executors carried the great seal to the king at Windsor, who observed that "he had heard his lordship was much mended;" and asking whether there was not a purse to contain the seal, dismissed them without further remark.

The following is the character of the lord keeper given by his brother and biographer, upon which it will be necessary to make a few comments.

"He was descended of a noble family, virtuously educated; an early student in the law, signalised in his first performances, preferred for his abilities; passed gradually from the meanest initiation of practice through every degree of business and preferment in the law: court-keeper, practiser in the king's bench, chief in his circuit, king's counsel, solicitor-general, attorney-general, chief justice of the common pleas, lord keeper of the great seal, and created a baron; and in all this walk trod upon no man's heels, for he entered only by vacancies, and never by ungrateful removes, and was helpful and a friend to those whom he succeeded, especially the Lord Nottingham, who almost owned him for his successor. Whilst he was chief justice he was taken into the privy-council, and then into the cabinet. He travelled most parts of the kingdom as judge in the several circuits; and

gained the friendship, I had almost (and I might have) said the love, of the chief gentry of England, who afterwards stood by him against divers attempts to remove or dishonour him. And notwithstanding his continual employments in church and state, many thought his room, or rather his places, worth crowding for: and however in nice matters it is more than human not sometimes to err, yet he stood against all as a rock immoveable; and nothing was ever found, even by the most discerning of a popular faction, that would or (in truth) could impeach his fame, probity, or honour. He served the crown steadily and according to law; and ever gave cogent reasons in public for what he did. No impression of fear, flattery, or interest, did ever taint or divert his justice. In his person he was modest to extremity; and yet in doing his duty enough assured. He was a declared enemy to pomp and vain glory. He was not an orator as commonly understood, that is a flourisher, but all his speech was fluent, easy, and familiar; and he never used a word for ornament, but for intelligence merely: and those who heard him speak, though in ordinary conversation, had scarce room left to ask any explication or enlargement. He was a lawyer (modestly speaking) not inferior to any of his time; and knowing in records and histories, not only of England, but in general. He was master of the European languages, as French, Italian, and Spanish, and had entered into those of High and Low Germany. He was adept in natural philosophy and mechanics, and no stranger to the mathematics. A musician in perfection, both practical and speculative, being a performer, composer, and (in print) a philosopher, as to the most recondite secrets of that art. He was covetous of nothing more than the society of the virtuosos of his time, as Lely, Moreland, May, Moor, Flamstead, and others of that tribe, who all courted him, and embraced his conversation, and many owned to profit by his encouragement and protection. He was civil and affable to all; and conversed, even with his enemies, without offence, and hated to be waited upon when he might

give despatch. His course of life was unexceptionable; no manner of vice encouraged, nor by him known within his walls. His diet plain, and meals hospitable and profitable. His most intense study was to amend whatever he found amiss and amendable, where his employment gave him means and a latitude to do it. His zeal was to do all the good he could to his country; and that he thought best done by supporting the church and crown of England in all due and legal prerogatives, and thereunto he adhered during all his life, and no motive whatsoever made him swerve. Whatever he did in public was legal and effectual, without any affected lustre or handles to fame, if he could avoid them. No wonder he is so soon forgot. He never had, nor asked for profit, any boons of his majesty; and at the end left but a moderate estate to his children, which one would think should have been by common profits much more; but thereby he demonstrated that corruption had no share in what he left. In short, he had a virtuous disposition, orderly and regular course of life, void of all pride and affectation; the utmost regard for truth and right; a vast extent of skill in the law and national constitution, and knowledge of men and the world; the love and esteem of the best; impartiality in his justice, and dexterity in the forms and administration of it; sense of his duty, public and private, with industry and affection duly to perform it; he was patient in hearing, modest in determining, compassionate in severities, orthodox and exemplary in the established church, and averse to all its enemies; for all which he had a visible temporal reward: and that is, dying as he lived, without stain or diminution of his honour, authority, or greatness, in the height of which he left the world. This character, which I have here given, is not out of opinion, rumour, or any means of fame whatever; but the result of my own personal knowledge and proof, and at the hour of death I can veritably swear to every article of it."

In attempting to form a more just and accurate opinion of the lord keeper's character than is to be derived

from the foregoing partial sketch, it is proper to regard him in connexion with the times in which he lived, and with the state of feeling and scale of principle which then prevailed. If in his public character Lord Guilford never rose above the prejudices and feelings of the age, he did not, like many of his contemporaries, sink without shame into those corrupt practices with which the higher ranks of society were infected. He was unstained by that loose prostitution in politics, and by that abandoned corruption which darkened the characters of Sunderland and Jefferies. Honest in his opinions, and in the expression of them, he refused upon more than one occasion to sacrifice them to his interests. But his character was altogether destitute of elevation. Possessing none of the elements of greatness, seldom in mind and never in feeling did he rise above mediocrity. He was thus led into meannesses, and sometimes into compliances, which men of loftier principles would have despised. Though not altogether free from the imputation of corruption in his judicial station, the accusation rests upon no substantial foundation, and his general character renders the justice of it improbable. Perhaps the most valuable quality which the lord keeper possessed was that discretion which in all the transactions of life is so sure a guide, and which enables a man of moderate powers to accomplish what the highest genius and talent, if misdirected, must fail to attain. As a lawyer, the name of the Lord Keeper Guilford has always maintained a respectable station; but it does not occupy the foremost rank. To his efforts to effect a reform both in the common pleas and in the court of chancery, the greatest credit is due. In private life, his character was certainly excellent. Under all the toils of office, and amid the distractions of political life, he sedulously maintained that affectionate intercourse with his own family, the loss of which is ill supplied by all that the most successful ambition can offer. The fervent attachment, the regard, approaching to reverence, which were felt for him by his brothers, and which are so

quaintly but beautifully expressed by his biographer, bear a striking testimony to the worth and goodness of his heart.

Some anecdotes of the lord keeper have been preserved by his brother, which are transcribed not only on account of the amusement they cannot fail to afford, but also as showing that he wanted that strength of character which prevents others from even attempting to render the possessor of it ridiculous.

Lord Sunderland, whose designs were generally opposed by the lord keeper, exerted all his wit to render him ridiculous. "All the artillery of foul mouths," says Roger North, "were pointed at him; and the Earl of Sunderland marched at the head of them, who commonly gave out the signal. His lordship's virtuous course of life was a vile obstacle, and slanders on that head would not stick. But I shall show some snares laid to catch him: in the meantime, vilifications plenty; those were at their tongues' end. He was neither courtier nor lawyer: which his lordship hearing, he smiled, saying, "that they might well make him a whoremaster, when they had dislawyered him." And to show their intent of fixing some scandal and contempt on him, I shall allege a ridiculous instance or two. His lordship's brother-in-law, more than once named in these papers, came to him seriously with advice; which was that he should keep a whore, and that if he did not, he would lose all his interest at court, for he understood from very great men (the Earl of Sunderland and his gamesters, I suppose,) that he was ill-looked upon for want of his doing so, because he seemed continually to reprehend them for practising the like, as almost every one did, and, if his lordship pleased, he would help him to one. His lordship was in his mind full of scorn at this proffer, which the messenger did not penetrate; and it was enough to decline the counsel, and not accept of his assistance. And with his nearest friends he made wonderful merry with this state policy, especially the procuring part, and said, 'That if he were to entertain a madam, it should be one

of his own choosing, and not one of their state trumpery.' But his lordship had deeper reflections; that, besides the sullying his character, if he had such a snake in his bed, they would find a way to come, by her, into his most retired intentions: for the courtiers knew the use that, in politics, might be made of the fair ladies, whom they could charm better than his lordship; and no spy like a female.

"To show that his lordship's court enemies, the Earl of Sunderland in particular, were hard put to it to find or invent something to report tending to the diminution of his character, I shall give an account of the most impudent buffoon-lie raised upon him, and with brazen affirmations of truth to it, dispersed from the court one morning, that ever came into fools' heads; and Satan himself would not have owned it for his legitimate issue. It fell out thus: A merchant of Sir Dudley North's acquaintance had brought over an enormous rhinoceros, to be sold to showmen for profit. It is a noble beast, wonderfully armed by nature for offence, but more for defence, being covered with impenetrable shields, which no weapon could make any impression upon; and a rarity so great that few men in our country have in their whole lives opportunity to see so singular an animal. This merchant told Sir Dudley North, that if he with a friend or two had a mind to see it, they might take the opportunity at his house, before it was sold. Hereupon Sir Dudley North proposed to his brother, the lord keeper, to go with him upon this expedition, which he did, and came away exceedingly satisfied with the curiosity he had seen. But whether he was dogged, to find out where he and his brother housed in the city, or flying fame carried an account of the voyage to court, I know not; but it is certain that the very next morning a bruit went from thence all over the town, and (as factious reports used to run) in a very short time, viz. that his lordship rode upon the rhinoceros; than which a more infantine exploit could not have been fastened upon him. And most people were struck with amazement at it, and divers ran here

and there to find out whether it was true or no; and soon after dinner some lords and others came to his lordship to know the truth from himself, for the setters of the lie affirmed it positively, as of their own knowledge. That did not give his lordship much disturbance, for he expected no better from his adversaries. But that his friends, intelligent persons, who must know him to be far from guilty of any childish levity, should believe it, was what roiled him extremely; and much more when they had the face to come to him to know if it were true. I never saw him in such a rage, and to lay about him with affronts (which he keenly bestowed upon the minor courtiers that came on that errand) as then; for he sent them away with fleas in their ear. And he was seriously angry with his own brother, Sir Dudley North, because he did not contradict the lie in sudden and direct terms, but laughed, as taking the question put to him for a banter, till by iterations he was brought to it. For some lords came, and because they seemed to attribute somewhat to the avowed positiveness of the reporters, he rather chose to send for his brother to attest, than to confirm his bare denial. And so it passed; and the noble earl, with Jefferies and others of that crew, made merry, and never blushed at the lie of their own making, but valued themselves upon it as a very good jest."

LORD JEFFERIES.

1648—1689.

George Jefferies, afterwards successively recorder of London, attorney-general, chief justice of the king's bench, and lord high chancellor of England, was born at Acton, near Wrexham, in the county of Denbigh, about the year 1648. [Note 41.] He was the sixth son of John Jefferies, Esq., of that place, by Margaret, daughter of Sir Thomas Ireland, Knight, of Bewsey, in the county of

Lancaster. His father was a gentleman of small estate; but his paternal grandfather had filled the office of a Welsh judge. Young Jefferies received his education successively at the free-school of Shrewsbury, at Saint Paul's free-school, and at Westminster school, under the celebrated Dr. Busby. Of the progress which he made in his studies, or of the motives which induced him to pursue the profession of the law, little is known. In consequence of the narrowness of his father's fortune, he was deprived of the benefit of an university education, and became at an early age a member of the Inner Temple, where, in a mean and obscure apartment, he for some time applied himself with diligence to his professional studies.* At this period he derived his principal support from his grandmother, who supplied him with an annuity of forty pounds, to which ten pounds were added by his father.

It has been asserted that Jefferies was never regularly called to the bar†; and it appears that while yet a student, and only eighteen years of age, he assumed the gown of a barrister, and attended the Kingston assizes, during the prevalence of the plague in London; an irregularity which was probably overlooked in that season of calamity. In endeavouring to force himself into practice, Jefferies looked principally to the city, attending with diligence at Guildhall and Hicks's Hall. In compliance also with the temper of the citizens, he not only professed the political principles at that time favoured by them, but attempted to ingratiate himself with them by adopting all their convivial habits. ‡ Nor did he neglect other artifices, equally mean, to promote his interests. We are told by Roger North § that, "after he was called to the bar, he used to sit in coffee-houses, and order his man to come and tell him that company attended him at his chamber; at which he would huff and say, 'let them stay a little, I will come presently,' and thus made a show of business."

* Lives of the Chancellors, vol. i. p. 179.
† Id.
‡ Life of Lord Keeper Guilford, vol. ii. p. 5.
§ Id. p. 4.

These arts appear to have been successful, for he rose at a very early age into practice; and although he possessed no resources from his father, he was married, while yet in his minority, to Sarah, the daughter of Thomas Neesham, A.M. Such were his reputation and influence in the city, even at this early age, that upon the 17th of March, 1670, on the resignation of Sir Richard Browne, he was appointed common serjeant. This office he enjoyed for several years, till, finding that the seat of recorder was likely to become vacant, he did not hesitate to sacrifice his political principles to his hopes of advancement, and having contracted such an acquaintance with Chiffinch, the king's favourite page, as, to use the words of Roger North, "is apt to grow up between immane drinkers*, he obtained, through the influence of the court, the vacant appointment, and on the 22d of October, 1678, was elected recorder of London.

Being thus introduced to the court party, he was made solicitor to the Duke of York, and received various other appointments in rapid succession. On the 17th of February, 1680, he was called to the degree of serjeant at law, and about the same time was made a Welsh judge. On the 13th of April in the same year, he succeeded Sir Job Charlton as chief justice of Chester, on the 12th of May was made king's serjeant, and on the 17th of November, 1681, was created a baronet. The degree of influence which Jefferies possessed at court was displayed in his appointment to the chief justiceship of Chester. Sir Job Charlton, a venerable and learned man, was in possession of the office; but as the recorder was resolved to appropriate it to himself, Sir Job was told that it was necessary that he should accept the seat of a puisne judge in the common pleas. "Sir Job," says Roger North, "laid this heavily upon his heart, and desired only that he might speak to the king, and receive his pleasure from his own mouth; but was diverted, as a thing determined. But once he went

* Life of Lord Guilford, vol. ii. p. 8.

to Whitehall, and placed himself where the king, returning from his walk in Saint James's Park, must pass, and there he set him down like hermit poor. When the king came in and saw him at a distance, sitting where he was to pass, he concluded that he intended to speak to him, which he could not by any means bear; he therefore turned short off, and went another way. Sir Job, seeing that, pitied his poor master, and never thought of troubling him more, but buckled to his business in the common pleas."*

While filling the office of recorder, it became the duty of Sir George Jefferies, as counsel for the crown, to prosecute many of the persons accused of a participation in the popish plot. At first he did not exhibit that violence and rancour against the prisoners which afterwards distinguished him. He was probably aware that the court would gladly, had it been possible, have discountenanced the prosecutions; but at length, when the popular feeling had risen to such a pitch, that common sense and justice were forgotten in the excitement, Jefferies readily adapted his conduct to the prevailing sentiment, and urged the conviction of the unfortunate prisoners with brutal vehemence. It is difficult to discover whether Jefferies himself felt convinced of the guilt of the accused. His attachment to the church of England, which assumed almost the semblance of a principle, might induce him to credit the reality of the plot; but even the most thorough conviction of its truth could not have excused the violence and injustice which he exhibited towards the accused. Nor was it in these trials alone that he manifested his disregard for the principles of truth and justice. The prosecutions for libels, which were at this time instituted by the court, afforded him an opportunity of promulgating certain unconstitutional doctrines which were doubtless intended to procure him favour from the government, and which probably led the way to his subsequent promotion.

* Life of Lord Guilford, vol. ii. p. 12.

At length the violence and intemperance of the recorder drew down upon him the reprehension of the party whose principles he had deserted. After the dissolution of the Oxford parliament in 1679, the country party petitioned for the calling of a parliament in terms offensive to the court; and in opposition to these petitions the prerogative party addressed the crown, expressing their *abhorrence* of the tumultuous proceedings of the petitioners. In encouraging these *abhorrers*, as they were termed, Jefferies rendered himself eminently conspicuous; and on the meeting of the new parliament, in 1680, he fell, with the rest of those who had opposed the petition for its assembling, under the censure of the commons. Accordingly, on the 13th of November, 1680, it was resolved, "that Sir George Jefferies, recorder of the city of London, by traducing and obstructing petitioning for the sitting of this parliament, hath destroyed the right of the subject." And it was ordered that an humble address should be presented to his majesty to remove Sir George Jefferies from all public offices. To this address his majesty replied that he would consider of it. Jefferies himself trembled at the prospect of popular indignation. Being brought to the bar of the house, he received a reprimand on his knees; and such was the effect of this discipline upon his spirits, that he immediately resolved to resign his office of recorder, which drew from the king the observation that "he was not parliament proof."* On the 2d of December the office was accordingly surrendered, and was immediately afterwards filled by George Treby, of the Middle Temple.

Of the character acquired by Jefferies while chief justice of Chester, some idea may be formed from the speech of Mr. Booth, afterwards Earl of Warrington, in which he denounces the profligate conduct of Jefferies in very severe terms. "The county for which I serve is Cheshire, which is a county palatine, and we have two judges peculiarly assigned to us by his majesty: our

* North's Examen, p. 550.

puisne judge I have nothing to say against him, for he is a very honest man, for aught I know; but I cannot be silent as to our chief judge, and I will name him, because what I have to say will appear more probable. His name is Sir George Jefferies, who, I must say, behaved himself more like a jack-pudding than with that gravity which becomes a judge: he was mighty witty upon the prisoners at the bar; he was very full of his jokes upon people that came to give evidence, not suffering them to declare what they had to say in their own way and method, but would interrupt them because they behaved themselves with more gravity than he; and in truth the people were strangely perplexed when they were to give in their evidence; but I do not insist upon this, nor upon the late hours he kept up and down the city; it is said he was every night drinking till two o'clock, or beyond that time, and that he went to his chamber drunk; but this I have only by common fame, for I was not in his company — I bless God I am not a man of his principles or behaviour — but in the mornings he appeared with the symptoms of a man that overnight had taken a large cup. But that which I have to say is the complaint of every man, especially of them that had any lawsuits. Our chief justice has a very arbitrary power in appointing the assize when he pleases, and this man has strained it to the highest point; for whereas we were accustomed to have two assizes, the first about April or May, the latter about September, it was this year, as I remember, the middle of August before we had any assize; and then he despatched business so well, that he left half the causes untried, and, to help the matter, has resolved that we shall have no more assizes this year."*

Jefferies was too firmly seated in the favour of the court to suffer from these attacks, and continued to deserve the good opinion of his patrons by the zeal with which he conducted the many important matters in-

* Chandler's Debates.

trusted to his hands. On the trials of Fitzharris* and of Plunket† he displayed great acrimony and violence; but the full tide of his insolent vituperation burst forth in the case of Colledge, the "protestant joiner." ‡ He was also counsel for the crown in the prosecution of Pilkington and others for a riot, arising out of the attempt made by the court to secure the election of one of the sheriffs of London §; in the celebrated case of the quo warranto against the city of London ||, and lastly in the prosecutions which followed the discovery of the Rye-house Plot. The good service which he did to government on these occasions, and especially on the trial of Lord Russell, in which he boldly endeavoured to pervert the rules of evidence, in order to procure a conviction, entitled him to some substantial mark of royal gratitude; and on the death of Sir Edmund Saunders [Note 42.], the chief justice of the king's bench, he was, on the 29th of September, 1683, appointed to the vacant office, and was soon afterwards sworn in as a member of the privy council. It was not until the 15th of May, 1685, that he was raised to the peerage, under the title of Baron Jefferies of Wem.

The temper which distinguished Jefferies, when counsel on the prosecution of Lord Russell, was again exhibited by him when he sate as judge on the trial of Algernon Sidney. The same desire to convict, the same eagerness to pervert the law, the same fierce animosity towards the prisoner, were again visible. The conclusion of this trial exhibited a singularly impressive scene. Jefferies had no sooner pronounced sentence than the prisoner exclaimed, "Then, O God! O God! I beseech thee to sanctify these sufferings unto me, and impute not my blood to the country, nor the city through which I am to be drawn; let no inquisition be made for it; but if any, and the shedding of blood that is innocent must be avenged, let the weight of it fall only upon those that maliciously prosecute me for righteous-

* State Trials, vol. viii. p. 223. † Id. p. 447. ‡ Id. p. 549.
§ Id. vol. ix. p. 137. || Id. vol. viii. p. 1039.

ness' sake."—"I pray God work in you," said Jefferies, "a temper fit to go unto the other world, for I see you are not fit for this."—"My lord," replied Sidney, "feel my pulse (holding out his hand), and see if I am disordered: I bless God I was never in better temper than I am now."* The feelings with which Jefferies presided at this trial may easily be divined when we hear the language with which he not long afterwards insulted the memory of Russell and of Sidney. In his summing up on the trial of Sir S. Barnardiston, for a misdemeanor, he said, "Then here is, as I said, the sainting of two horrid conspirators; here is the Lord Russell sainted, that blessed martyr; my Lord Russell, that good man, that excellent protestant: he is lamented, and what an extraordinary man he was, who was fairly tried and justly convicted, and attainted for having a hand in this horrid conspiracy against the life of the king, and his dearest brother, his royal highness, and for the subversion of the government. And here is Mr. Sidney sainted! What an extraordinary man he was! Yes, surely, he was a very good man, because you may some of you remember, or have read the history of those times, and know what share Mr. Sidney had in that black and horrid villany, that cursed treason and murder — the murder, I mean, of King Charles I., of blessed memory; a shame to religion itself, a perpetual reproach to the island we live in, to think that a prince should be brought, by pretended methods of law and justice, to such an end at his own palace. And it is a shame to think that such bloody miscreants should be sainted and lamented, who had any hand in that horrid murder and treason, and who, to their dying moments, when they were upon the brink of eternity, and just stepping into another world, could confidently bless God for their being engaged in that good cause, as they call it, which was the rebellion which brought that blessed martyr to his death. It is high time for all mankind that have any Christianity, or sense of heaven or hell, to bestir themselves,

* State Trials, vol. ix. p. 902.

to rid the nation of such caterpillars, such monsters of villany as these are." *

The hatred with which Jefferies regarded the presbyterian party found a free vent on the trial of the celebrated Richard Baxter, for publishing what was termed a seditious libel. The language which, during this trial, Jefferies applied both to the counsel and to the defendant, was more gross, vulgar, and indecent than had ever before been heard in a court of justice. Interrupting Mr. Wallop, the counsel for Mr. Baxter, he said, "Mr. Wallop, I observe you are in all these dirty causes; and were it not for you gentlemen of the long robe, who should have more wit and honesty than to support and hold up these factious knaves by the chin, we should not be at the pass we are at."—"My lord," said Mr. Wallop, "I humbly conceive that the passages accused are natural deductions from the text."—"You humbly conceive!" cried Jefferies, "and I humbly conceive.—Swear him—swear him!" Soon afterwards he added, "Sometimes you humbly conceive, and sometimes you are very positive; you talk of your skill in church history, and of your understanding Latin and English: I think I understand something of them too, as well as you, but in short must tell you that, if you do not understand your duty better, I shall teach it you." Upon this Mr. Wallop sat down. On Baxter endeavouring to address the court, Jefferies stopped him. "Richard! Richard! dost thou think we will hear thee poison the court? Richard, thou art an old fellow, an old knave, and thou hast written books enough to load a cart. Every one is as full of sedition, I might say treason, as an egg is full of meat. Hadst thou been whipped out of thy writing trade forty years ago it had been happy. Thou pretendest to be a preacher of the gospel of peace, and thou hast one foot in the grave. It is time for thee to begin to think what account thou intendest to give; but leave thee to thyself, and I see thou wilt go on as thou hast begun; but, by

* State Trials, vol. ix. p. 1353.

the grace of God, I'll look after thee! I know thou hast a mighty party, and I see a great many of the brotherhood in corners, waiting to see what will become of their mighty don, and a doctor of the party (looking at Dr. Bates) at your elbow; but, by the grace of Almighty God, I will crush you all."

When the chief justice had finished his summing up, Baxter said, "Does your lordship think that any jury will pretend to pass a verdict upon me upon such a trial?"—"I'll warrant you, Mr. Baxter," replied Jefferies; "don't you trouble yourself about that." The jury immediately found a verdict of guilty.*

The rebellion of the Duke of Monmouth, in the autumn of 1685, quickly followed by the total rout and defeat of his army at Sedgmoor, opened a wide field for the display of those ferocious tastes by which Jefferies was distinguished. Monmouth had been highly popular in the west, through which, in the year 1680, he had made the triumphal progress celebrated by Dryden in his Absalom and Achitophel:—

> The crowd, that still believe their kings oppress,
> With lifted hands their young Messiah bless:
> Who now begins his progress to ordain,
> With chariots, horsemen, and a numerous train.

Of the popular rejoicings to which this visit gave rise an account has been preserved by a contemporary writer.† "In August, 1680, the Duke of Monmouth went into the country to divert himself, visiting several gentlemen in the west of England, by whom he was received and entertained with a gallantry suitable to the greatness of his birth and the relation he stood in to his majesty, incredible numbers of people flocking from all the adjacent parts to see this great champion of the English nation, who had been so successful both against the Dutch, French, and Scots. He went first into Wiltshire, and was pleased to honour the worthy esquire Thynne with his company for some days. From thence

* State Trials, vol. xi. p. 500.
† Historical Account, &c. of James Duke of Monmouth.

he went to Mr. Speaks in Somersetshire, in which progress he was caressed with the joyful acclamations of the countrypeople, who came from all parts twenty miles about, the lanes and hedges being every where lined with men, women, and children, who with incessant shouts cried, 'God bless king Charles and the protestant duke!' In some towns and parishes which he passed through, they strewed the streets and highways where he was to pass with herbs and flowers." Five years afterwards the duke again appeared, and was joined by great numbers of his former friends, who little foresaw that the festivities and rejoicings, with which they had hailed their deliverer, were so soon to be replaced by the terror and dismay which the scaffold, the axe, and the halter inspire.

The unfortunate men who had adhered to Monmouth had of course incurred the penalties of high treason. To punish these ignorant and devoted wretches Jefferies was despatched to the west, not only with a commission of *oyer* and *terminer*, but with a military commission as general of the west; and the carnage that ensued was in strict accordance with the latter character. In the Life of James II., written by himself*, an attempt is made to exculpate the king from the guilt of these unheard-of cruelties. "His imprudent zeal," observes the royal biographer, speaking of Jefferies, "or, as some said, avarice, carrying him beyond the terms of moderation and mercy, which were always most agreeable to the king's temper, he drew undeservedly a great obloquy upon his majesty's clemency, not only in the number but the manner, too, of several executions." The following letter, addressed by James II. to the Prince of Orange, and dated the 24th of September, 1685, seems to prove that the king was well acquainted with the course of these proceedings, during which it will be seen that he did not neglect to solace himself with the recreation of fox-hunting:—"Since I came back from Winchester I received yours of the 21st from Loo, by Mr.

* Vol. ii. p. 43.

Sidney, and having been a fox-hunting on Tuesday last, had not then time to let you know it. I was this day again at the same sport, the weather being now very proper for it, having ended stag-hunting the day I returned hither. As for news, there is little stirring, but that lord chief justice has almost done his campaign. He has already condemned several hundreds, some of which are already executed, some are to be, and the others sent to the plantations, which is all that I have now time to tell you, but that I shall always be as kind to you as you can desire." * The singular story of Major Holmes is mentioned by the king as a proof of his own clemency and of the severity of Jefferies. "This gentleman had been engaged with Monmouth, had lost a son and his arm in the battle, was taken prisoner, and brought up to town. The king being desirous to see him, he behaved himself in such a manner as gained an esteem from every body. His carriage was free from dejection, yet full of respect. He owned his fault, but had recourse to his majesty's mercy; but told him that, considering his losses and his age, the favour he asked would be more advantageous for his majesty's reputation to grant than beneficial to him to receive. The king, who loved courage even in an enemy, could not refrain countenancing of him, discoursed freely with him, and no one was more frequently in the king's antechamber, till it was thought fit to send him down into the west, as one who could best inform the lord chief justice who were the most criminal, and who most deserved mercy, and that he might do some service before he received his pardon, which was deferred only for that reason till after his return. But instead of that, the first news the king heard of him was that he had been hanged with the rest. This his majesty was very much surprised at, and made him question the chief justice at his return; but he palliated that and his other severities with the pretence of necessary justice, which the king having made him judge of, knew not how to

* Dalrymple's Appendix, part ii. p. 165.

contradict, especially since he had the precaution not only to send four other judges as his assistants along with him, but Mr. Pollexfen likewise, in quality of his solicitor, who being a known favourer of the presbyterian party, he hoped would moderate the chief justice's heat, so that after all this care and foresight his majesty had reason to acquiesce to what had been done, though it was a great disservice to him at the bottom; but my lord chief justice making it pass for an excess of zeal, hindered not his majesty from conferring the title of a baron upon him as a reward for his former merit." *

The progress of Jefferies through the western counties might have been tracked by the blood which he so lavishly shed; and some anecdotes of his cruelties have been preserved which strike the reader with indignant horror. When the sisters of one of the prisoners who had been convicted stopped his coach, to the wheels of which they clung, begging mercy for their brother, he ordered his coachman to cut their arms and hands with his whip. † And upon another occasion, when a lady interceded for the life of one of the prisoners, to whom she was betrothed, he answered her with a jest so cruel, so coarse, and so unmanly, that the very relation of it rouses the feelings almost like a present insult. ‡ The avarice of Jefferies is alluded to by the king, and there is no doubt that, in many instances, persons who had been implicated in the rebellion purchased their lives from him with money. From Mr. Prideaux, a gentleman of Devonshire, he received so large a sum as £15,000 for not bringing him to trial. §

One of the most barbarous of the many cruel executions which took place at this time was that of Mrs. Lisle, a gentlewoman of upwards of seventy years of age, who had been, in fact, guilty of no offence whatever. She had harboured two men who had escaped from the rout at Sedgmoor; but it did not appear that she was acquainted with their participation in the rebellion. One

* Life of James II., vol. ii. p. 113.
† Granger, vol. ii. p. 543.
‡ See Dalrymple and Ralph.
§ Dalrymple's Mem. p. 140.

of the witnesses for the prosecution was a person of the name of Dunne, a presbyterian, whom Jefferies suspecting to be an unwilling witness, attacked with a coarseness of language and violence of demeanour which appear almost to have deprived the man of his senses. A few passages will sufficiently illustrate the temper of the chief justice. "Why, thou vile wretch! dost thou think, because thou prevaricatest with the court here, that thou canst do so with God above, who knows thy thoughts? And it is infinite mercy that with those falsehoods of thine he does not strike thee into hell! Jesus God! there is no sort of conversation or human society to be kept with such people as these are, who have no religion, but only in pretence." Soon afterwards, addressing himself to the jury, he said, "I hope, gentlemen of the jury, you take notice of the strange and horrible carriage of this fellow, and withal you cannot but observe the spirit of that sort of people, what a villanous and devilish one it is. Good God! that ever the thing called religion (a word that people have so much abused) should ever wind up persons to such a height of impiety, that it should make them lose the belief that there is a God of truth in heaven! * * * A Turk is a saint to such a fellow as this; nay, a pagan would be ashamed to be thought to have no more truth in him." Colonel Penruddock having stated that Dunne, the witness, had asserted that he apprehended the persons who had taken refuge with Mrs. Lisle to be rebels, the following examination took place:—

"*Jefferies.* What do you say to that, Dunne? It seems you told Barton that you apprehended them to be rebels.

"*Dunne.* I apprehended them for rebels, my lord!

"*Jefferies.* No, no! you did not apprehend them for rebels; but you hid them for rebels. But did you say to Barton that you took them for rebels?

"*Dunne.* I take them to be rebels!"

"*Jefferies.* You blockhead! I ask you did you tell him so?

"*Dunne.* I tell Barton so!

"*Jefferies.* Ay, is not that a plain question?

"*Dunne.* I am quite cluttered out of my senses; I do not know what I say.

"*Jefferies.* But to tell the truth would rob thee of none of thy senses, if ever thou hadst any; but it should seem that neither thou nor thy mistress the prisoner had any, for she knew nothing of it neither, though she had sent for them thither."

At length the case went to the jury, who manifested a desire to retire, "upon which the Lord Jefferies expressed a great deal of impatience, and said he wondered that in so plain a case they would go from the bar." Having retired, "he would have sent to them with an intimation, that if they did not come quickly, he would adjourn, and let them lie by it all night." The jury in about half an hour appeared, but it was only to express a doubt as to the sufficiency of the evidence. Jefferies told them that the fact they referred to had been proved. The foreman replied that they did not remember it. Jefferies repeated his assertion, and added, that "if there were no proof, the circumstances and management of the thing were as full proof as need be." Upon this the jury, after some deliberation, brought in a verdict of *guilty*. It is stated by many historians, that the jury, three several times, brought in a verdict of acquittal, which, by the threats of the chief justice, they were induced to retract; but this fact does not appear from the report in the State Trials. *

Mrs. Lisle was convicted on the 27th of August. "Look you, Mrs. Lisle," said Jefferies; "when I left his majesty, he was pleased to remit the time of all executions to me, that, wherever I found any obstinacy or impenitence, I might order the executions with what speed I thought best. Therefore, Mr. Sheriff, take notice, you are to prepare for the execution of this gentlewoman this afternoon; but withal I give you, the prisoner, this intimation: we that are the judges shall

* Vol. xi. p. 371.

stay in town an hour or two; you shall have pen, ink, and paper brought you; and if, in the mean time, you employ that pen, ink, and paper, and this hour or two well (you understand what I mean), you may hear further from us in a deferring the execution."

At the intercession of several divines, a respite was granted till the 2d of September, and in the mean time an application was made to the king, by Lady St. John and Lady Abergavenny, for mercy; and a petition was presented from the prisoner herself, praying for a commutation of the punishment, from burning to beheading. To the appeal for mercy, James replied, "that he would do nothing in it, having left all to the chief justice,"—to the petition, "that he would not reprieve her one day; but, for altering the sentence, he would do it, if there were any precedents for it." * Here, at all events, was an opportunity afforded to the king of extending mercy, and as he chose to reject it, the grievous odium of this unjust and cruel punishment must rest with him; yet, with a meanness proportioned to the cruelty of the act itself, he endeavours in his own memoirs to affix the stigma wholly upon Jefferies. †

During his "western campaign," Jefferies discovered a gross abuse which had prevailed for some time at Bristol, but to which he put a very speedy termination. The affair is thus related by Roger North: — "There is one branch of that chief's expedition in the west, which is his visitation of the city of Bristol, that hath some singularities, of a nature so strange, that I think them worth my time to relate. There had been an usage among the aldermen and justices of the city (where all persons, even common shopkeepers, more or less, trade to the American plantations), to carry over criminals, who were pardoned with condition of transportation, and to sell them for money. This was found to be a good trade; but not being content to take such felons as were convict at their assizes and sessions, which pro-

* State Trials, vol. xi. p. 376. † Life of James II., vol. ii. p. 43.

duced but a few, they found out a shorter way, which yielded a greater plenty of the commodity. And that was this: the mayor and justices, or some of them, usually met at their tolsey (a court-house by their exchequer) about noon, which was the meeting of the merchants, as at the exchange at London; and there they sat and did justice-business, that was brought before them. When small rogues and pilferers were taken and brought there, and, upon examination, put under the terror of being hanged, in order to which, mittimuses were making, some of the diligent officers attending, instructed them to pray transportation, as the only way to save them; and for the most part they did so. Then, no more was done; but the next alderman in course took one and another, as their turns came; sometimes quarrelling whose the last was, and sent them over and sold them. This trade had been driven for many years, and no notice taken of it. Some of the wealthier aldermen, although they sat in the court and connived, as Sir Robert Cann, for instance, never had a man; but yet they were all involved in the guilt when the charge came over them. It appears not how this outrageous practice came to the knowledge of the lord chief justice; but when he had hold of the end he made thoroughstitch work with them; for he delighted in such fair opportunities to rant. He came to the city, and told some that he had brought a broom to sweep them. The city of Bristol is a proud body, and their head, the mayor, in the assize commission, is put before the judge of assize; though, perhaps, it was not so in this extraordinary commission of oyer and terminer. But for certain, when his lordship came upon the bench and examined this matter, he found all the aldermen and justices concerned in this kidnapping trade, more or less, and the mayor himself as bad as any. He therefore turns to the mayor, accoutred with his scarlet and furs, and gave him all the ill names that scolding eloquence could supply; and so, with rating and staring, as his way was, never left till he made him quit the bench,

and go down to the criminals' post at the bar; and there he pleaded for himself, as a common rogue or thief must have done: and when the mayor hesitated a little, or slackened his pace, he bawled at him, and, stamping, called for his guards; for he was general by commission. Thus the citizens saw their scarlet chief magistrate at the bar, to their infinite terror and amazement. He then took security of them to answer informations, and so left them to ponder their cases amongst themselves. At London Sir Robert Cann applied, by friends, to appease him, and to get from under the prosecution, and at last he granted it, saying, 'Go thy way; sin no more, lest a worst thing come unto thee.' The prosecutions depended till the revolution, which made an amnesty; and the fright only, which was no small one, was all the punishment these juridical kidnappers underwent. And the gains, acquired by so wicked a trade, rested peaceably in their pockets."*

Stained with the blood of the aged, the weak, and the defenceless, Jefferies returned to the capital to claim, from the hands of the master he had so faithfully and acceptably served, the reward due to his singular merits. That reward was immediately conferred upon him, and on the 28th of September he received the great seal, and was appointed lord high chancellor.

Having thus gained the summit of his ambition, Jefferies appears to have in some degree relaxed his activity in carrying into effect the wishes of the court. It is possible, too, that the heart, which no sentiment of humanity could affect, was touched by some religious scruples. He had no bias whatever towards catholicism; and though, for his own advancement, he had ever been ready to forward the designs of the court, he felt no inclination to offend his conscience without some corresponding advantage. Nor is it improbable that he foresaw the dangers to which the king was exposing himself by thus attacking the dearest prejudices of his subjects. In consequence, probably, of some advice to this effect

* Life of Lord Guilford, vol. ii. p. 24.

tendered to the king, the favour of Jefferies began to decline at court. This is asserted by Burnet, and we have some confirmatory evidence to the same effect in the lately published Ellis Correspondence. "I am very confident," says the letter-writer, "that matters are brewing to break the neck of our wide-mouthed, high-paced ——— &c., and as conjurors throw a dog or a cat to allay the devil with, so he may be thrown as a choosing morsel to the next parliament. Herbert has represented, since his return from the western circuit, the disservice done by the management of the former circuit, and the rapine; and I am creditably told it works to admiration; and his dear friend, the thin great man at Whitehall, quits him."* To regain his favour at court, Jefferies did not hesitate to abandon his church of England friends, and to suggest to the king the establishment of the celebrated ecclesiastical commission. It was obvious to James, that some measures had become necessary in order to depress the church of England party, who had manifested the strongest opposition to the designs contemplated by the court in favour of the catholics. By the advice of Jefferies, therefore, he resolved to re-establish the court of high commission, though, as the existence of that tribunal had been denounced by statute, it was necessary to bestow a different title upon the new court. A commission was therefore issued, appointing the Archbishop of Canterbury, the Lord Chancellor Jefferies, Lord Rochester, Lord Sunderland, the Bishops of Durham and Rochester, and the lord chief justice to be commissioners for reforming all abuses of which the ecclesiastical law had cognizance. The proceedings under this commission against the Bishop of London, the University of Cambridge, and Magdalen College, Oxford, were in strict conformity with the character and object of the tribunal. The vice-president and fellows of Magdalen College were cited to appear before the commissioners at Whitehall, and having appeared, they tendered an answer to

* Vol. i. p. 104. and see id. p. 222.

the charge of disobeying the king's commands. This answer was signed by only five of the delegates, Dr. Fairfax, the sixth, not consenting to it. He desired to state to the commissioners his reasons for this refusal, upon which Jefferies, imagining that he was about to tender his submission, exclaimed, "Ay, this looks like a man of sense, and a good subject; let us hear what he will say." Fairfax then argued that the matter was cognizable in Westminster Hall, and not before the commissioners. Jefferies replied that he was a doctor of divinity, and not of law. The doctor then demanded by what commission and authority they sate? The boldness of this question threw the chancellor into a most violent paroxysm of passion. "Pray what commission have you," said he, "to be so impudent in court? This man ought to be kept in a dark room. — Why do you suffer him without a guardian? Pray let the officers seize him." *

The conspicuous part which Jefferies acted on this commission rendered him extremely odious to the nation at large; and his cruelties in the west were almost forgotten in his severities towards the suffering members of the church of England. When, in consequence of the increase of the popular discontents, and of the rumours from Holland of the preparations on foot for the expedition to England, the king was advised to call a parliament in order to appease the people, Jefferies, well aware that on the first meeting of the commons he should probably be assailed as the great grievance of the nation, vehemently opposed, at the council-table, the proposition for calling a parliament.† That proposition, indeed, had been made too late; and Jefferies was saved from the vengeance of the people's representatives only that he might experience the fiercer passions of the people themselves.

The period now approached when Jefferies was to be dragged from the elevated station he had so long disgraced by his violence, his cruelty, and his want of prin-

* Rennett, vol. iii. p. 501. † Ellis Cor. vol. ii. p. 144.

ciple. On the approach of the Prince of Orange, and the flight of the king from London, the people, terrified by the report of a popish massacre, rose tumultuously; and Jefferies, justly dreading their vengeance, attempted to make his escape. The following is a circumstantial narrative of this attempt:—"The chancellor, now without protection, having rendered himself obnoxious to most people, and being perfectly hated by the nation, on Monday, between three and four in the morning, withdrew, and having in disguise got down safe to Wapping, put himself on board a collier, which was pretended to be bound for Newcastle, but indeed was designed for Hamburgh; but some persons having notice thereof, by means of the mate, they went to a justice for a warrant to apprehend him; but he thought fit to put them off, whereupon they applied themselves forthwith to the lords of the council, who granted them a warrant, and they went immediately to search the ship. But he, on Tuesday night, not thinking himself safe on board the collier in which he was to pass, lay in another ship hard by, so that those who came that day to search for him missed of him on board, but had information given them that he was hard by at a little peddling alehouse, where accordingly they found him, being the sign of the Red Cow, in Anchor and Hope Alley, near King Edward's Stairs, from whence they immediately hurried him in a coach, guarded with several blunderbusses, to the lord mayor's; where the crowd was so great, and the rabble so numerous, all crying out together *Vengeance! Justice! Justice!* that the lord mayor was forced to come out into his balcony, with his hat in his hand, and to desire the people to go away and keep peace, and did promise them that he had already sent to the lords of the council about the matter, and that they should have justice done them, and that in the mean time their prisoner should be safely guarded. Whereupon the people withdrew, and soon after my lord, under a strong guard, was sent to the lords of the council, who committed him to the Tower, where he continued to the 18th of April,

1689, when he was freed by death from his earthly confinement. He had for some years before been subject to terrible fits of the stone, which in all probability now accelerated his death, though others gave out he abandoned himself to excessive drinking, thinking to support his sinking spirits by it, and that that helped forward to put a period to his life. He was buried privately in the Tower the Sunday night following, by an order his relations got from King William."*

Burnet adds to his account of the capture of Jefferies, that "the lord mayor was so struck with the terror of the rude populace, and with the disgrace of a man who had made all people tremble before him, that he fell into fits, of which he died soon after."

The deep and indignant feelings which cruelty and oppression excite, render it difficult to form a cool and impartial opinion of the character of Jefferies. In all the essential qualities of mind which a judge ought to possess, he seems to have been totally deficient. Unprincipled, cruel, irascible, and impatient, he stained the pure fountains of justice with blood and with corruption. No sentiment of integrity, no feeling of mercy, ever found a place in his bosom. To these qualities he added a brutal levity of conduct, strangely unbecoming the judicial character. His acquirements as a lawyer were of a mean order; and it is not dealing too harshly with him to adopt the censure of Mr. Justice Foster, and to pronounce him "the very worst judge that ever disgraced Westminster-hall."

The ease with which those who are conversant with courts of justice learn to disregard the sufferings of others, and the faculty, which too often follows, of turning those sufferings into ridicule, are but modifications of those brutal qualities which in Jefferies appeared in their full perfection. It may perhaps tend, in some degree, to prevent the growth of those callous and inhuman feelings, to observe them in the odiousness of their complete developement, and to remark the execration and

* Lives of the Chancellors, vol. i. p. 185.

abhorrence which they never fail to excite in every heart of common sensibility. It is a salutary lesson to see the memory of Jefferies descending to posterity darkened with the indignant reproaches of each succeeding age, and weighed down by an ever-increasing weight of infamy. To affix to his polluted name an additional stigma, to brand his dishonoured memory with a fresh mark of reprobation, is an office grateful to humanity.

In his personal character, Jefferies was remarkable for his laxity and disregard of the decencies of his station. Roger North has left a character of him, which, though perhaps highly coloured, is certainly, in its main representations, correct. "His friendship and conversation lay much amongst the good fellows and humorists, and his delights were accordingly drinking, laughing, singing, kissing, and all the extravagancies of the bottle. He had a set of banterers for the most part near him, as, in old times, great men kept fools to make them merry, and these fellows, abusing one another and their betters, were a regale to him; and no friendship or dearness could be so great in private, which he could not use ill, and to an extravagant degree, in public. No one that had any expectations from him was safe from his public contempt and derision, which some of his minions at the bar bitterly felt. Those above, and that could hurt or benefit him, and none else, might depend on fair quarter at his hands. When he was in temper, and matters indifferent came before him, he became his seat of justice better than any other I ever saw in his place. He took a pleasure in mortifying fraudulent attorneys, and would deal forth his severities with a sort of majesty. He had extraordinary natural abilities, but little acquired, beyond what practice in affairs had supplied. He talked fluently and with spirit; and his weakness was, that he could not reprehend without scolding, and in such Billingsgate language as should not come out of the mouth of any man. He called it *giving a lick with the rough side of his tongue.* It was ordinary to hear him say, *Go, you are a filthy, lousy, nitty*

rascal, with much more of like elegance. Scarce a day passed that he did not chide some one or other of the bar, when he sate in the chancery, and it was commonly a lecture of a quarter of an hour long. And they used to say, *This is yours; my turn will be to-morrow.* He seemed to lay nothing of his business to heart, nor care what he did, nor what he left undone, and spent in the chancery court what time he thought fit to spare. Many times on days of causes at his house, the company have waited five hours in a morning, and after eleven he hath come out inflamed, and staring like one distracted, and that visage he put on when he animadverted on such as he took offence at, which made him a terror to real offenders, whom also he terrified with his face and voice, as if the thunder of the day of judgment broke over their heads, and nothing ever made men tremble like his vocal inflictions. He loved to insult, and was bold without check, but that only was when his place was uppermost. To give an instance: A city attorney was petitioned against for some abuse, and affidavit was made that, when he was told of my lord chancellor, 'My lord chancellor!' said he, 'I made him!' meaning his being a means to bring him early into city business. When this affidavit was read, 'Well,' said the lord chancellor, 'then I will lay my maker by the heels,' and with that conceit one of his best old friends went to jail. One of these intemperances was fatal to him. There was a scrivener of Wapping brought to hearing for relief against a bummery bond: the contingency of losing all being shown, the bill was going to be dismissed; but one of the plaintiff's counsel said that he was a strange fellow, and sometimes went to church, sometimes to conventicles, and none could tell what to make of him, and it was thought he was a *trimmer*. At that the chancellor fired: 'A trimmer!' said he; 'I have heard much of that monster, but never saw one. Come forth, Mr. Trimmer! turn you round, and let us see your shape!' and at that rate talked so long, that the poor fellow was ready to drop under him;

but at last the bill was dismissed with costs, and he went his way. In the hall, one of his friends asked him how he came off. 'Came off!' said he; 'I am escaped from the terrors of that man's face, which I would scarcely undergo again to save my life; and I shall certainly have the frightful impression of it as long as I live.' Afterwards, when the prince of Orange came, and all was in confusion, this lord chancellor, being very obnoxious, disguised himself, in order to go beyond sea: he was in a seaman's garb, and drinking a pot in a cellar. This scrivener came into the cellar after some of his clients, and his eye caught that face, which made him start; and the chancellor, seeing himself eyed, feigned a cough, and turned to the wall with his pot in his hand; but Mr. Trimmer went out and gave notice that he was there, whereupon the mob flowed in, and he was in extreme hazard of his life; but the lord mayor saved him, and lost himself. For the chancellor being hurried, with such crowd and noise, before him, and appearing so dismally, not only disguised but disordered, and there having been an amity betwixt them, as also a veneration on the lord mayor's part, he had not spirit to sustain the shock, but fell down in a swoon, and not many hours after died." *

Evelyn, who was acquainted with Jefferies, tells us, that being present at the wedding of Mrs. Castle, a city lady, he met there "Sir George Jefferies, newly made chief justice of England, who, with Mr. Justice Withings, danced with the bride, and was exceeding merry. These great men," adds Evelyn, "spent the rest of the afternoon, until eleven at night, in drinking healths, taking tobacco, and talking much beneath the gravity of judges, who had but a day or two before condemned Mr. Algernon Sidney." † Sir John Reresby ‡ also has left us an account of a dinner party at the house of Jefferies, while he was chancellor, at which the lord mayor and some other gentlemen were present. Jefferies,

* Life of Lord Guilford, vol. ii. p. 31. † Memoirs, vol. i. p. 530.
‡ Memoirs.

according to custom, drank deep at dinner; and in order, as he said, to divert the company, he called for Mountfort, one of his gentlemen, who had been a comedian, and who was an excellent mimic. Mountfort was then desired to plead before them, which he did, imitating all the great lawyers of the day, to the great diversion of the lord chancellor.

The person and character of Jefferies have been thus sketched by an anonymous writer: — "He was rather above the middle stature; his complexion fair; his face well enough, though mixed with an air a little malicious and unpleasant. He was a man of tolerable sense, and had, by long practice, acquired some tolerable knowledge of the law, though, as little as it was, more than he had occasion to make use of. He had a pretty large stock of ill nature and wit, in which lay his greatest excellence, though an unenvied one. But, in short, his *law* and his *tongue* were the two best accomplishments he was master of; by the help of which he sometimes put falsehood, but more frequently truth, out of countenance.

"He spoke many pleasant things, but very few handsome ones, disgracing his wit by his intolerable railing, and mean passions; and would frequently, even upon the bench itself, fall into such heats as were not only unworthy of a judge, but even of a private man. To do him justice, he had a great deal of baseness and cruelty in his nature, having a particular delight and relish in such things as give horror to the rest of mankind."*

On some rare occasions Jefferies did indeed display feelings approaching to kindness and gratitude. When chief justice of Chester, certain proceedings instituted against the celebrated Philip Henry, for attending a conventicle, were brought to his notice; but in this instance, at least, he manifested no desire to persecute a man whose conscientious discharge of his duty had already subjected him to much suffering. "He did now," says the biographer of Mr. Henry, "in private conversation, seem to

* Life and Character of Jefferys, p. 44.

applaud what was done in this matter, as was expected; whether out of a private pique against some that had been active in it, or for what other reason is not known; but it was said, he pleasantly asked some of the gentlemen, by what new law they pressed carts, as they passed upon their occasions along the road, to carry away goods distrained for a conventicle? It was also said that he spoke with some respect of Mr. Henry; saying, he knew him, and his character well, and that he was a great friend of his mother's (Mrs. Jefferies of Acton, near Wrexham, a very pious, good woman), and that sometimes, at his mother's request, Mr. Henry had examined him in his learning, when he was a schoolboy, and had commended his proficiency. And it was much wondered at by many, that of all the times Sir George Jefferies went that circuit, though it is well enough known what was his temper, and what the temper of that divine, yet he never sought any occasion against Mr. Henry, nor took the occasions that were offered, nor countenanced any trouble intended him, though he was the only non-conformist in Shropshire."*

Mr. Seward, in his collection, has preserved another anecdote favourable to the character of Jefferies. On his arrival at Taunton, previously to opening the commission for the trial of the persons concerned in Monmouth's rebellion, he was waited upon by the minister of the church of Saint Mary Magdalen, in that town, who, in a very mild manner, remonstrated with him on the barbarity of his proceedings. Jefferies listened to him with great calmness, and soon after his return to London, sent for the clergyman, and presented him to a stall in the cathedral of Bristol.†

* Life of Mr. Philip Henry, p. 150. ed. 1825.
† Seward's Anecdotes, vol. ii. p. 85.

LORD SOMERS.

1650—1716.

JOHN SOMERS was born, as it is supposed, in the year 1650, at White Ladies, an ancient mansion which had formerly been a monastery, in the city of Worcester. The family of Somers was respectable, and had long possessed an estate at Clifton, in the parish of Severnstoke, in Gloucestershire. Admiral Sir George Somers, who discovered the Bermudas or *Somers* Islands, was a branch of the same family. John Somers, the father of Lord Somers, was an attorney, and during the civil war espoused the cause of the parliament, and commanded a troop of horse under Cromwell. His zeal is said to have been such, that after in vain endeavouring to persuade the clergyman of Severnstoke to desist from haranguing in his pulpit in favour of the king, he fired a pistol over his head, the ball of which lodged in the sounding board. The mother of Lord Somers was Catherine Ceavern, a lady of a Shropshire family.

In his infancy Lord Somers was placed under the care of his aunt, Mrs. Mary Blurton, with whom he principally resided till his removal to the university. His earliest education was received at the college school. He was also for some time a pupil at a private school at Walsall, in Staffordshire. Of his character, at this time, some idea may be formed from a narrative preserved amongst the MSS. of Dr. Birch: "The account of his behaviour at school I had many years ago from a school-fellow. I think Walsall, in Staffordshire, was the place where they learned their grammar together. I remember well his account of Johnny Somers being a weakly boy, wearing a black cap, and never so much as looking out when they were at play," &c.* Of the manner in

* Seward's Anecdotes, vol. ii. p. 114.

which young Somers employed his time after the conclusion of his school education, and until he went to the university, which was not until he was twenty-four years of age, no account has been given. It has been supposed by some, that he was destined by his father to his own branch of the profession, and that this period was passed in his father's office. Whatever his destination at this time may have been, his hours must have been well employed, in the acquisition of those accomplishments by which he was afterwards distinguished. In the year 1672, he formed an acquaintance with the young earl of Shrewsbury, who resided for some time at White Ladies. He had the good fortune also to attract the attention of the solicitor-general, Sir Francis Winnington; and it was probably owing to the encouragement which he received from these friends, that he formed the intention of devoting himself to the bar.

In the year 1675 Somers entered as a commoner of Trinity College, Oxford, being then in his twenty-fourth year. It does not appear that either at school or at the university, though distinguished by a quickness of parts, he exhibited any proof of those extraordinary talents which might have led to the prognostication of his future eminence. But his character, even at this early age, was such as to inspire no common respect. His father, we are told, was accustomed to visit London during the terms, and, on his way, usually left his horse at the George Inn, at Acton, where he often mentioned "his hopeful son at the Temple." The landlord, one day, in reply to these panegyrics, said, "Why don't you let us see him, sir?" and accordingly Mr. Somers requested his son to accompany him as far as Acton, on his return home; but on his arrival at the George, taking the landlord aside, he said, "I have brought him, Cobbet; but you must not talk to him as you do to me: he will not suffer such fellows as you in his company." *

On the 5th of May, 1676, Mr. Somers was called to the bar, though he continued to reside at the university

* Life of Lord Somers, p. 11.

for a considerable period afterwards. During this time, much of his attention must have been devoted to the study of constitutional history, of his accurate acquaintance with which he soon gave the world an opportunity of judging. His first literary performance is said to have been the report of an election case—*The memorable Case of Denzil Onslow, Esq., tried at the Assizes in Surrey, July the 20th*, 1681, *touching his Election at Haslemere, in Surrey, wherein is much good Matter and Direction touching the due ordering of Elections for Parliament.** The next work in which Mr. Somers engaged was of greater importance, not only on account of the public interest with which the subject was regarded, but from the learning and research which it displayed. The nation was at this time distracted by the question respecting the exclusion of James, Duke of York, from the succession. On the one hand, the Whigs, and all those who dreaded the principles, both in politics and religion, which the duke was known to entertain, sought to exclude him from the throne; while, on the other, the king, the lovers of prerogative, and the adherents of the church of Rome, resisted, with all their energy, a measure which not only recognised a power in the country superior to that of the crown, and at variance with every notion of absolute hereditary right, but which would deprive them of a sovereign suited, in all respects, to the accomplishment of their own peculiar views. While this subject was undergoing the warmest discussion, both within and without the walls of parliament, Mr. Somers resolved to do his part towards enlightening the public mind, by a full and clear exposition of the principles by which the succession to the crown had, from the earliest periods of our history, been governed. This tract he published under the title of *A brief History of the Succession, collected out of the Records and the most authentic Historians, written for the Satisfaction of the Earl of H.*† A second edition appeared in 1688,

* Printed in Somers's Tracts, vol. i. p. 374. ascribed by Lord Glenbervie to Lord Somers's Election Cases, vol. i. p. 341.

† Somers's Tracts, vol. xvi. p. 167. 1st ed.

and a third in 1714. The object of this treatise was to establish the authority of parliament to limit, restrain, or qualify the right to the succession; a proposition which no temperate enquirer into our constitutional history could have ventured to deny, and which has not only been repeatedly acted upon, but also fully recognised and confirmed by statute.* The exertions of the duke's party, and the artifices of the court, were successful in defeating the project of an exclusion, which at a later period was converted into the more degrading measure of an expulsion.

After this triumph, the friends of the prerogative assumed a higher tone; and upon the *breaking* of the Oxford parliament, a royal declaration was issued, framed by the Lord Chief Justice North †, in explanation of the causes which had led to the dissolution of the two last parliaments. In this instrument, the conduct of those who had opposed the crown, and advocated the bill of exclusion, was arraigned in terms so strong, that it was thought necessary to address a vindication of their proceedings to the nation at large. This was accomplished by the publication of a tract entitled *A just and modest Vindication of the two last Parliaments.* ‡ It does not appear with whom the idea of this publication originated; but it has been supposed that more than one pen was employed in its production. We are told by Burnet, that the tract was originally penned by Sidney, and that a new draught was made by Somers, which was corrected by Sir William Jones. § The fact mentioned by Lord Hardwicke ||, that a copy of this work, "in the hand-writing of Lord Somers," was amongst the MSS. which were destroyed in the fire at the chambers of the Honourable C. York, can hardly be considered as disproving Burnet's account. Though the work was at the time generally attributed to Jones ¶, yet

* 13 Eliz. c. 1. 6 Anne, c. 7. s. 1, 2.
† Life of Lord Guilford, vol. 1. p. 381. ed. 1826.
‡ State Tracts of Charles II.
§ Burnet's Own Times. || State Papers, vol. ii. p. 399.
¶ Echard's Hist. of the Revolution.

there is sufficient internal evidence to prove that Somers mainly assisted in the composition of it. To vindicate the proceedings of the last two parliaments, by proving the nature and extent of the powers lodged by the constitution in the house of commons, was the design of this excellent tract; and if it should be thought, that the writer has argued in support of some privileges conferring too unlimited a power upon the commons, it must be remembered, that he wrote at a period when the representatives of the people could ill afford to relinquish any means of withstanding the arbitrary designs of the court. So broken were the spirits of the Opposition by the triumphs of the court, that this excellent publication produced very little effect. It was most creditable to Somers that, at a time when the hopes even of the brave and the good were thus depressed, he ventured to call the nation to a sense of its rights and its danger.

The active pen of Mr. Somers was, in the course of the same year, again resumed in defence of the political rights of his countrymen. The production which he now gave to the world was entitled *The Security of Englishmen's Lives; or the Trust, Power, and Duty of the Grand Juries of England explained according to the Fundamentals of the English Government, and the Declaration of the same made in Parliament by many Statutes, published for the Prevention of Popish Designs against the Lives of many Protestant Lords and Commoners, who stand firm to the Religion and ancient Government of England.* By many this tract was attributed to Lord Essex; by others to Sir William Jones; but Burnet rightly affirms that it was the production of Somers, "who writ the best papers that came out in that time." A copy of it in the hand-writing of Somers was destroyed with his other manuscripts.* The occasion of this tract was the celebrated attempt to procure the finding of a true bill, for high treason, against the Earl of Shaftesbury, at the Old Bailey; when, notwithstanding the strenuous efforts of the two chief justices, Pemberton and North, and the

* Hardwicke State Papers, vol. ii. p. 399.

illegal examination of the witnesses before the grand jury in open court, the bill was ignored; a proceeding which irritated the partisans of the court almost to a degree of frenzy.* The grand jury, it was affirmed, were perjured, and the most vehement abuse was showered upon them. In defence of their verdict, and in support of the institution of grand juries in general, Mr. Somers composed this tract, which has received the applause of many enquirers into our constitutional literature.† In one instance, however, the author appears to have pushed his doctrine to a faulty excess, where he insists that grand juries are not to be guided by *probabilities* only, since in fact all evidence is reducible to a mere probability, as the testimony of an eye-witness must depend upon the probability of his speaking the truth; a probability into which it is frequently necessary to enquire.

But political studies alone did not occupy the active mind of Mr. Somers. He had devoted himself with much ardour to classical pursuits; and of the progress which he had made in these, and of his general attachment to literature, he afforded an instance in 1681, by the publication of a translation, into English, of the Epistles of Dido to Æneas, and of Ariadne to Theseus, from Ovid. It would be unreasonable to institute a comparison between the versions of Mr. Somers and those of Dryden and Pope; but it may be asserted, that in Mr. Somers's attempt there is considerable power of diction, and some ease of versification. The following lines have been cited as an impartial specimen of the poems:

> "With cruel haste to distant lands you fly,
> You know not whose they are, nor where they lie;
> On Carthage and its rising walls you frown,
> And shun a sceptre which is now your own.
> All you have gain'd you proudly do contemn,
> And fondly seek a fancied diadem;
> And should you reach at last this promised land,
> Who'll give its power into a stranger's hand?
> Another easy Dido do you seek,
> And new occasions new-made vows to break?

* See the ravings of Roger North, in his *Examen*.

† See the Letter on Libels, General Warrants, &c. p. 31. Eunomus, vol. 3. p. 263. 2d ed.

When can you walls like ours of Carthage build,
And see your streets with crowds of subjects fill'd?
But though all this succeeded to your mind,
So true a wife no search could ever find.
Scorch'd up with love's fine fire, my life does waste,
Like incense on the flaming altar cast;
All day Æneas walks before my sight,
In all my dreams I see him ev'ry night;
But see him still ungrateful as before,
And such as, if I could, I should abhor.
But the strong flame burns on against my will;
I call him false, but love the traitor still."

Soon after the publication of these poems, Mr. Somers again appeared before the public as the translator of the life of Alcibiades in the version of Plutarch by various hands; and about the same time he is supposed to have produced the poem entitled *Dryden's Satire to his Muse*, in answer to the celebrated *Absalom and Achitophel* of that poet. With regard to the authorship of this poem, which is written with great vigour, and is certainly superior to the translations from Ovid, much doubt has, with reason, been expressed. [Note 43.]

In the year 1682, Somers left the university, after a residence of seven years. It appears that, although he took his bachelor's degree, he left before he had taken that of master of arts. On his removal to London, he immediately began to practise at the bar, and, as it would appear, with very eminent success, since during the reign of James II. his professional income is said to have amounted to 700*l.* per annum; a very considerable sum at that period.* In the year following the commencement of his practice, he was employed as one of the counsel in the celebrated case of Pilkington and Shute, the sheriffs of London, and others, who were indicted for a riot during the election of sheriffs.† In the arguments and other proceedings which took place in the course of this prosecution Mr. Somers appears to have taken little part; but his employment in a case of so much importance and notoriety must have contributed to his progress in his profession. The defendants were found guilty, and severely fined; but on

* Life of Lord Somers, p. 15. † Howell's State Trials, vol. ix. p. 187.

the revolution the judgment was reversed in parliament.

Notwithstanding the occupation which his professional duties afforded him, Mr. Somers found leisure for the cultivation of general literature, and distinguished himself by the patronage which he extended to literary undertakings and to men of letters. By his advice, and under his encouragement, the first folio edition of Milton was printed*; and at a later period he had the honour of fostering the rising genius of Pope.

> "The courtly Talbot, Somers, Sheffield read;
> Ev'n mitred Rochester would nod his head."

The reputation which Mr. Somers had acquired as a constitutional lawyer led to his being employed in one of the most important cases in the annals of our state trials. On the assumption of a dispensing power by James II., and the promulgation by him, for the second time, of a declaration of indulgence, the object of which was the illegal introduction of the catholics to power, the prelates of the church of England opposed the unconstitutional measure, and thus, in the words of Hurd, "atoned in some measure for former miscarriages." The declaration was directed to be read on two several Sundays, during the time of divine service; but the performance of this duty was found so obnoxious to the clergy, that the archbishop of Canterbury and six of the bishops humbly petitioned the king to be absolved from it. Inflamed by this refusal, and instigated by the evil advice of Jefferies, James summoned the petitioners before the council, where, instead of tendering a submission, the prelates professed that they had done nothing that they were not ready to justify. The result was that an information was filed against them for publishing a seditious libel against the king and his government, and on the 15th of June, 1688, they were brought to trial in the court of king's bench. The counsel for the bishops were Sir Robert Sawyer, Mr. Finch, Mr. Pol-

* See the Dedication to the 2d ed.

lexfen, Sir George Treby, Serjeant Pemberton, Serjeant Levinz, and Mr. Somers. It is said that on finding the name of the latter in the list of their legal advisers, the bishops objected to him as a person whose youth and want of practice rendered him unfit for so arduous a contest; but on Pollexfen representing to them the great learning of Mr. Somers, and his accurate knowledge of the records, and intimating his own resolution not to appear himself, unless Mr. Somers should also be employed, he was at once associated in the defence. Of the services rendered by Mr. Somers on this occasion to his clients it is difficult to form a judgment; but that much of the deep constitutional learning displayed by the other counsel had been furnished by his researches is extremely probable. His own address was, agreeably to the modesty and discretion of his mind, distinguished by its brevity, its compression, and its close application to the case. It was, in fact, an admirable summary of all the arguments which could be adduced on behalf of his clients. The event of this great trial was most favourable to the liberties of the country, and the acquittal of the bishops contributed more than any other event to hasten the impending revolution.

Of the part acted by Mr. Somers, in forwarding that great political event, but little is known. It is probable, however, that he was consulted by those distinguished persons who were most active in soliciting the presence of the Prince of Orange, and it has indeed been said by one historian* that he was admitted into the most secret councils of the prince, and was one of those who concerted the measure of bringing him over to England. Upon the flight of James II., and the presentation of the address from the lords and the assembly of commons to the Prince of Orange, requesting him to summon a convention, letters were issued for that purpose in the prince's name, and Mr. Somers, who had never hitherto appeared in parliament, was returned by the city of Worcester to represent his fellow-citizens in the ap-

* Tindal.

proaching convention. A more zealous and able deputy could not have been selected; and in the long debates which took place with regard to the settlement of the nation, he acted a very conspicuous part.* The commons having voted that James had abdicated, and that the throne was thereby vacant, and the house of lords having proposed certain amendments in that resolution, a committee was appointed, of which Mr. Somers was one, to conduct a conference with the lords on the subject. The chief objection of the peers was to the word *abdicate*, in place of which they proposed to substitute the term *deserted*, and to omit altogether the clause respecting the vacancy of the throne. In justification of the resolution as originally worded, Mr. Somers spoke at considerable length and with much learning, and the lords ultimately consented to withdraw their amendments. It has been said, and frequently repeated, that these verbal contests little befitted the dignity of the assembly in which they took place; but it must be remembered that, where a whole nation is interested in a dispute, there may be numbers who are captivated by words as well as by reason.

Another vote having passed, "that the Prince and Princess of Orange should be declared king and queen," the convention applied themselves to the consideration of the grievances under which the nation had suffered. A committee was accordingly appointed, of which Mr. Somers was a member, to bring in general heads of such things as were absolutely necessary to be considered, for the better securing our religion, liberty, and laws.† The report of the committee included a variety of matters, the principal part of which were afterwards incorporated in the *Declaration of Rights*. The amendments were referred to a new committee, of which Mr. Somers was chairman, and being at length completed, the Declaration of Rights, by an order of both houses, was directed to

* Hardwicke State Papers, vol. ii. p. 401. Appendix to Mr. Maddock's Life. † Com. Journ. vol. 10. p. 15.

be engrossed and to remain amongst the records, and also to be enrolled in chancery.

In surveying this portion of the life of Mr. Somers, it is impossible to regard it without the most lively sentiments of admiration and respect. From an obscure origin, he had risen, by the exertion of his own talents and diligence, not merely to a high rank in his own profession, but to a conspicuous station in public life. From a very early age the strenuous advocate of popular rights, he enjoyed the happiness of seeing the principles he so deeply loved and cherished, practically applied, on a scale magnificently extensive, to the settlement of the nation. It must indeed have been a most grateful reflection to him, that when the liberties of the country were almost overwhelmed, he had not hesitated to exert himself in their defence, and that the better spirit, which manifested itself at the revolution, might have been owing, in some degree, to his own exertions. To a mind truly ambitious, what reward can be proposed equal to reflections like these? To instruct and inform the intellect of a nation, to lead them to a knowledge of their rights, and to teach them how those rights may be claimed and exercised with temper, discretion, and success, is indeed a worthy and noble ambition.

Soon after the accession of William and Mary, Mr. Somers, having been appointed solicitor-general, received the honour of knighthood; and in the debates on the bill for recognising the new sovereigns and ratifying the act of convention, he distinguished himself greatly by the able manner in which he defended the principles of the revolution. The legality of the convention having been questioned by a member of the opposition, because it had not been summoned by writ, the solicitor-general answered the objection with much spirit. He said that if it was not a legal parliament, they who were then met, and had taken the oaths enacted by that parliament, were guilty of high treason; that the laws repealed by it being still in force, they must presently return to King

James; that all the money levied, collected, and paid by virtue of the acts of that parliament, made every one that was concerned in it highly criminal. "This," adds Burnet, "he spoke with such zeal, and such an ascendent of authority, that none were prepared to answer it, so that the bill passed without more opposition. This was a great service done in a very critical time, and contributed not a little to raise Somers's character." *

In the month of April, 1692, Sir John Somers was raised to the post of attorney-general; and such was the reputation he acquired both in the discharge of his official duties and in the house of commons, that he was, in the month of March, 1692-3, appointed lord keeper of the great seal. An unfortunate misunderstanding occurred, immediately after his receiving the seals, between the king and himself, relative to the filling up of the office of attorney-general, and some other legal appointments. The lord keeper had promised the place of attorney to Sir Thomas Trevor, but William had directed that it should be bestowed upon Mr. Ward. Sir John Somers, therefore, addressed a very respectful letter to the king, urging the ancient practice with regard to these appointments, and stating that he conceived it was for his majesty's service that they should be dependent on the great seal. Notwithstanding this remonstrance, Mr. Ward received the appointment, but shortly afterwards was succeeded by Sir Thomas Trevor.† On accepting the great seal, Sir John Somers was not created a peer; and it was not until the year 1697 that he was raised to the peerage by the style and title of Baron Somers, of Eversham. It appears that he expressed considerable reluctance to receive this honour. "I had directions," says the Duke of Shrewsbury in a letter dated May, 1695, and enclosing a warrant for a peerage, "to have said every thing I could imagine to persuade you to accept of a title, and the king is really convinced that it is for his service that you should. I beg the

* Own Times, vol. ii. p. 42. folio ed.
† Hardwicke State Papers, vol. ii. p. 427.

answer I may have, may be a bill for the king's signing. As for arguments, I have used all I have already, and by your objections you may give me leave to tell you, you are as partial and unreasonable with too much modesty, as some are with too much ambition." *

In the year 1695, during the king's absence from England, Lord Keeper Somers was constituted one of the lords justices, a post which he again filled in the years 1697 and 1698, and in 1697 he was appointed lord high chancellor. At this time the king was pleased to grant to him the manors of Reygate and Howleigh in Surrey, together with an annuity of £2100 out of the fee-farm rents. These grants formed an article in the impeachment, which a few years afterwards was preferred against him by the commons.

The situation of Lord Somers in the ministry was difficult and critical. Although he enjoyed the confidence of the king, yet he had rendered himself particularly obnoxious to the Tories, who had attained such influence, that William was perpetually wavering between that party and the Whigs. In a letter, which appears to have been written towards the close of the year 1698, Lord Somers expresses, in strong terms, his doubts as to the stability of the administration. "There is nothing to support the Whigs, but the difficulty of his (the king's) piecing with the other party, and the almost impossibility of finding a set of Tories who will unite. So that in the end I conclude it will be a pieced business, which will fall asunder immediately."† At length the Tories resolved to make a strenuous effort to remove the lord chancellor, whose great credit with the king had been the principal means of preserving the Whig administration: by his discretion and moderation the heat and violence, which some of the leading Whigs displayed, had been softened down and rendered less displeasing to the king, and unless he could be removed, it was in vain that the Tories struggled for power. The leaders, therefore, of that party endeavoured to

* Hardwicke State Papers, vol. ii. p. 429. † Id. p. 436.

persuade the king that the difficulties, into which he had been thrown, were occasioned by the odium in which the ministry were held in the house of commons. Various charges had been there preferred against Lord Somers, particularly that he had removed several gentlemen from the commission of the peace, who refused to subscribe the voluntary association which had been very generally entered into, upon the discovery of the assassination plot of 1696. In these removals Lord Somers had merely acted in conformity to an order of the council, directing that those justices of the peace, who refused to subscribe, should be dismissed. Though his enemies did not succeed in procuring a vote of the house against him, yet the repeated attempts which they made were considered by the king to be so injurious to his service, that he resolved to dismiss Lord Somers from the office of chancellor. This act seemed the more ungracious, as the chancellor was, at the time, suffering severely from an illness, induced by his close attendance upon his various duties in court and in the cabinet. On his first appearance at court, after his restoration to health, the king told him that it seemed necessary for his service that his lordship should part with the seals, and that it was desirable that the delivery of them up should be his own act. To this proposal Lord Somers replied, that he could not make a voluntary surrender of his office, which might give his enemies occasion to charge him with being intimidated or guilty; but that if his majesty should be pleased to send a warrant, under his hand, demanding the seal, he would instantly resign it. Soon afterwards, the warrant being brought by Lord Jersey, Somers immediately delivered to that nobleman the seal which he had for seven years held with so much honour.*

The conduct of William, in thus dismissing one of the most faithful and attached of his ministers, at the instigation of his enemies, a victim to the violence of faction, ill became that high character for justice and

* Burnet, vol. ii. p. 242. fol. ed.

resolution which had raised him to the throne of England. Every honourable and well-judging person was disgusted with the coolness and want of heart with which the king consented to sacrifice a man, whose greatest offence was that he had been one of the principal instruments in accomplishing that happy settlement of the nation, which placed his ungrateful master on the throne. At the close of his life, William is said to have adverted to the dismissal of Somers as an act of which he most sincerely repented.* Such was the indecent haste with which he gratified the wishes of the Tories, that no one had been selected to fill the vacant office. The seals were offered both to Holt and Trevor, who declined them; and after having been a short time in commission, were placed in the hands of Sir Nathan Wright. For some time it was thought that Lord Somers would possibly be reinstated †; but the king had fallen into the hands of the Tories, who resisted, with all their influence, his return to office.

Having thus succeeded in removing Lord Somers from the king's councils, his enemies resolved to harass him with an impeachment. The principal ground of this impeachment was the part taken by him in the celebrated partition treaties, which had rendered him extremely obnoxious to the house of commons; and accordingly, on the 1st of April, 1701, he was impeached, together with the Earl of Portland and the Earl of Orford, of high crimes and misdemeanors. Not contented with this proceeding, on the 23rd of April, the commons presented an address to the king to remove those noblemen from his councils; but the lords, on the other hand, presented a counter-address, begging his majesty not to pass any censure on the accused, while the impeachment was pending against them. At length, on the 19th of May, the commons exhibited articles of impeachment against Lord Somers, which were grounded, 1. On his conduct with regard to the partition treaties; 2. On

* Cunningham's Hist. vol. i. p. 252.
† Hardwicke State Papers, vol. ii. p. 436.

his improperly passing certain grants under the great seal to himself and others; 3. On the affair of Captain Kidd.

The history of the partition treaties is too well known to require repetition; but it may be proper to state with some particularity the part taken in that affair by Lord Somers. In 1698, while the king was in Holland, certain overtures were made to him by the French government, for a treaty, settling the succession to the throne of Spain in case of the death of Charles II., whose health was at that time in a very precarious state. The terms proposed were, that the electoral prince of Bavaria should have the kingdoms of Spain, the Indies, and the Low Countries; that the Dauphin should possess the kingdoms of Naples and Sicily, with certain other territories; and that the Duchy of Milan should be settled on the emperor's second son, the Archduke Charles. William was pleased to entertain these proposals, and on the 15th of August, 1698, addressed a letter * to Lord Somers, desiring to have his opinion on the treaty, and commanding him to send full powers under the great seal, with the names in blank, for the appointment of commissioners to treat with Count Tallard, the agent of the king of France. By the king's permission the subject of his letter was communicated to Lord Orford, the Duke of Shrewsbury, and Mr. Montague; and on the 28th of August, Lord Somers transmitted to the king the result of their deliberations. † He remarked the ill-consequences with which the proposal would be attended should the French not be sincere; though at the same time, in case no treaty should be entered into, there was, he observed, considerable danger that the French, having so large a force in readiness, might take possession of Spain in case of Charles's death. He laid before the king the state of England, discontented with the amount of the taxes, and averse to a new war; and he remarked upon the unfavourable position in which the trade of England might be placed by

* Kennet, vol. iii. p. 805. † Id. p. 806.

the transferring of Sicily to the French. Pursuant to the royal commands, the requisite commissions, with the names of the commissioners in blank, were forwarded to the king. The treaty was prepared and signed without any further communication with Lord Somers, who, so far from affording any encouragement to it, had suggested doubts as to its policy.

The charge respecting the grants improperly passed by him appears to have been equally unfounded. He freely acknowledged that the king had been pleased to grant to him certain manors and rents; but he denied that such grants were procured by his own solicitation.

The article which charged Lord Somers with granting a commission, under the great seal, to Captain Kidd was founded on some singular circumstances which took place in the year 1695. The colonists of America had been greatly annoyed by the attacks of certain pirates, who infested those seas; and in consequence of their representations a commission was granted to Captain Kidd, the commander of a privateer, which had been fitted out for the expedition by subscription, to authorize the privateer to proceed and capture the pirates; and a grant was made, to the adventurers, of the prizes which they might take, reserving a portion to the crown. It unfortunately happened that Captain Kidd, finding himself in the command of a well-appointed vessel, conceived that it would be more profitable to become a pirate himself than to be the capturer of pirates; and accordingly commenced a career, which ended, a few years afterwards, in his execution for murder and piracy.*

To all these articles Lord Somers, on the 24th of May, delivered in his answer†, which, on the face of it, exhibited a full and satisfactory denial; and it remained for the commons to substantiate their impeachment by proofs. They insisted, however, upon the appointment of a committee of both houses to settle the preliminaries of the trial, a proposition to which the lords were unwilling to

* State Trials, vol. xiv. p. 123. † Id. p. 263.

accede; and, after various conferences and much dispute, the lords fixed the 17th of June for the trial. On that day, the commons not appearing in support of their impeachment, Lord Somers was acquitted. Had the commons, instead of screening themselves by affected delays, proceeded to the proofs of the charges against Lord Somers, there is little doubt that the result must still have been an acquittal. The answer given by the accused was full and sufficient; and was supported, so far as they appear, by his proofs. It was soon after this impeachment that Swift, who had just visited London with an earnest desire to engage his pen in politics, published his "Discourse of the Contests and Dissensions between the Nobles and Commons in Athens and Rome, with the Consequences they had on both those States.", In this pamphlet, which the author devoted to the interests of the Whigs, whose party he soon afterwards forsook, the character of Lord Somers is given under the name of Aristides. "Their next great man was Aristides. Besides the mighty service he had done his country in the wars, he was a person of the strictest justice, and best acquainted with the laws as well as forms of their government, so that he was in a manner chancellor of Athens. This man, upon a slight and false accusation of favouring arbitrary power, was banished by ostracism; which, rendered into modern English, would signify, that they voted he should be removed from their presence and council for ever. But, however, they had the wit to recall him; and to that action owed the preservation of their state by his future services." At a subsequent period of his life, when he had become an active partisan of the Tory administration, Swift composed a very different character of Lord Somers, which will be noticed hereafter.

The conduct of the king, in dismissing Lord Somers from his councils, did not inspire him with any of that morose indisposition to serve his country which persons of meaner minds might have displayed. At the close of the year 1701, he entered into a corre-

spondence with Lord Sunderland, with whom he had not previously been on good terms, for the purpose of effecting a reconciliation between the king and the leaders of the Whig party. In a letter from Sunderland to the king, dated 1st of September, 1701, the writer openly recommends his majesty to be guided by the advice of Lord Somers. "The Tories will not be satisfied without ruining my Lord Somers, nor the Whigs without undoing the ministers, in which the latter think they have the whole nation on their side. But at last what can the king do? He must certainly do what may determine him to take his measures. For example, let him come into England as soon as he can, and immediately send for my Lord Somers. He is the life, the soul, and the spirit of his party, and can answer for it; not like the present ministers, who have no credit with theirs, any further than they can persuade the king to be undone. When his majesty speaks to my Lord Somers, he ought to do it openly and freely, and ask him plainly what he and his friends can do and will do, and what they expect, and the methods they propose. By this the king will come to a judgment of his affairs, and he may be sure that my Lord Somers will desire nothing for himself or any of the impeached lords, but will take as much care not to perplex the king's business as can be desired; and if he can do nothing his majesty shall like, he will remain still zealous and affectionate to his person and government." * On the 10th of October the king addressed a short note to Lord Somers, from Loo, accrediting Lord Galway as a confidential agent, and assuring Somers of the continuance of his friendship. † In consequence of these negotiations, Somers prepared "Heads of Arguments to induce the King to call a New Parliament ‡;" and on the 10th November the old parliament was dissolved. By the exertions and advice, principally of Somers and Sunderland, some progress was made towards the formation of a Whig ministry; but by the death of William

* Hardwicke State Papers, vol. ii. p. 446. † Id. 452. ‡ Id. 453.

the project was defeated, and the Tories were once more firmly established.

For some years after the accession of Queen Anne, Lord Somers does not appear to have taken any active part in politics. Much of his time was devoted to literature and science, and he was elected President of the Royal Society, of which he had long been a member. In the year 1706, he introduced into the house of lords the statute which is known by the title of the "Act for the Amendment of the Law, and the better Advancement of Justice." (4 Anne, c. 16.) This act effected several highly important changes in the administration of the law, its principal object being to prevent a failure and delay of justice, in consequence of errors in form. It compelled a party who demurred for certain formal errors to state the grounds of his objection on the face of the demurrer; it prevented formal errors from being taken advantage of, after judgments by default; it enabled a defendant to plead several defences; it took away the necessity of an actual attornment by tenants; it directed that no dilatory plea should be received without an affidavit of the truth; persons sued on money-bonds were enabled to plead payment of the money, before action brought; parties having rights of entry upon land were compelled to bring their actions within a year after the entry, in order to avoid a fine levied with proclamations; actions against persons beyond seas were authorized to be brought after their return, notwithstanding the statute of limitations; bail-bonds given to the sheriff were made assignable to the plaintiff in the action, who was thereby enabled to enforce them in his own name; subpœnas in equity were prohibited before bill filed; costs were given on quashing a writ of error to the defendant; and, lastly, the action of account was given against executors and administrators. It is to be greatly regretted that we have only a very imperfect account of the debates on this bill. The relation of them given by Burnet, who at that time sat in the lords, is, that Lord Somers "made a motion in the house

of lords to correct some proceedings in the common law and in chancery, that were both dilatory and chargeable. He began the motion with some instances that were more conspicuous and gross; and he managed the matter so that both the lord-keeper and judges concurred with him, though it passes generally for a maxim, that judges ought rather to enlarge than contract their jurisdiction. A bill passed the house that began a reformation of proceedings at law, which, as things now stand, are certainly amongst the greatest grievances of the nation. When this went through the house of commons, it was visible that the interest of under officers, clerks, and attornies, whose gains were to be lessened by this bill, was more considered than the interest of the nation itself. Several clauses, how beneficial soever to the subject, which touched on their profit, were left out by the commons. But what fault soever the lords might have found with these alterations, yet, to avoid all disputes with the commons, they agreed to their amendments. There was another general complaint made," adds Burnet, " of the private acts of parliament that passed through both houses too easily, and in so great a number, that it took up a great part of the session to examine them, even in that cursory way that was subject to many inconveniences. The fees that were paid for these, to the speaker and clerks of both houses, inclined them to favour and promote them. So the Lord Somers proposed such a regulation in that matter as will probably have a good effect for the future." *

Although suffering from the state of his health, Lord Somers took a very active part in the great work of the Union of Scotland, in projecting the scheme of which he is said by Burnet to have had the chief hand. † In the debates which took place on this subject, in the house of lords, he was one of the most distinguished speakers. ‡ When the question of the abolition of the Scottish privy council came before parliament, he opposed, in a speech,

* Own Times, vol. ii. p. 439. fol. ed. † Id. p. 468. ‡ Id. p. 464.

the heads of which have been preserved *, the existence of a separate administration. The arguments urged by him, on this occasion, might be well applied to the present government of Ireland.

In the second parliament of Queen Anne's reign, the influence of the Whigs had a decided preponderance; and in the year 1708, Lord Somers again became a member of the administration, in the character of president of the council. But neither his spirits nor his health now fitted him for the active duties of political life; and it was probably without regret that, on the return of the Tories to power in 1710, he saw himself displaced. From this period he seldom appeared in public; and on the accession of George I. received merely the nominal distinction of a place at the council-table. His faculties had suffered from a paralytic affection, which totally incapacitated him for business; though in moments when the complaint had less power over him, he still expressed a warm interest in the welfare of his country. When the Septennial Bill was in progress, Dr. Friend, the celebrated physician, called on Lord Townsend, and informed him that Lord Somers was at that moment restored to the full possession of his faculties by a fit of the gout, which suspended the effect of his paralytic complaint. Townsend immediately waited on Lord Somers, who embraced him, and, congratulating him on the progress of the bill, declared that he thought it would be the greatest support possible to the liberty of the country.† His health subsequently becoming extremely infirm, he sank into a state of imbecility, from which, on the 26th of April, 1716, he was happily released by death.

Lord Somers was never married. He left two sisters, to whom his estate descended; one of whom married Sir Joseph Jekyll, the master of the rolls, and the other Charles Cocks, Esq. from whom the present Lord Somers is descended.

* Hardwicke State Papers, vol. ii. p. 473.
† Coxe's Life of Sir R. Walpole, vol. i. p. 77. 4to. ed.

The character of Lord Somers has been drawn by the pen of Addison, who has prefixed to the number of the Freeholder in which it is contained, his lordship's motto, *prodesse quam conspici.* Although this character has fallen under the censure of Horace Walpole, as "neither worthy of the author nor his subject," yet it must be admitted to present a very noble picture of an honourable man, an enlightened statesman, and an accomplished scholar. It is, therefore, given entire.

"It often happens, that extirpating the love of glory, which is observed to take the deepest root in noble minds, tears up several virtues with it, and that suppressing the desire of fame is apt to reduce men to a state of indolence and supineness. But when, without any incentive of vanity, a person of great abilities is zealous for the good of mankind; and as solicitous for the concealment, as the performance of illustrious actions; we may be sure, that he has something more than ordinary in his composition, and has a heart filled with goodness and magnanimity.

"There is not, perhaps, in all history, a greater instance of this temper of mind, than what appeared in that excellent person whose motto I have placed at the head of this paper. He had worn himself out in his application to such studies as made him useful or ornamental to the world, in concerting schemes for the welfare of his country, and in prosecuting such measures as were necessary for making those schemes effectual; but all this was done with a view to the public good that should rise of these generous endeavours, and not to the fame that should accrue to himself. Let the reputation of the action fall where it would, so his country reaped the benefit of it, he was satisfied. As this turn of mind threw off, in a great measure, the oppositions of envy and competition, it enabled him to gain the most vain and impracticable into his designs, and to bring about several great events for the safety and advantage of the public, which must have died in the birth, had he been as desirous of appearing beneficial to mankind as of being so.

"As he was admitted into the secret and most retired thoughts and counsels of his royal master, King William, a great share in the plan of the protestant succession is universally ascribed to him. And if he did not entirely project the union of the two kingdoms, and the bill of regency, which seem to have been the only methods in human policy for securing to us so inestimable a blessing, there is none who will deny him to have been the chief conductor in both these glorious works. For posterity are obliged to allow him that praise after his death, which he industriously declined while he was living. His life seems to have been prolonged beyond its natural term, under those indispositions which hung upon the latter part of it, that he might have the satisfaction of seeing the happy settlement take place, which he had proposed to himself as the principal end of all his public labours. Nor was it a small addition to his happiness, that by this means he saw those who had been always his most intimate friends, and who had concerted with him such measures, for the guaranty of the protestant succession, as drew upon them the displeasure of men who were adverse to it, advanced to the highest posts of trust and honour under his present majesty. I believe there are none of these patriots, who will think it a derogation from their merit to have it said, that they received many lights and advantages from their intimacy with my Lord Somers, who had such a general knowledge of affairs, and so tender a concern for his friends, that, whatever station they were in, they usually applied to him for his advice in every perplexity of business, and in affairs of the greatest difficulty.

"His life was, in every part of it, set off with that graceful modesty and reserve, which made his virtues more beautiful the more they were cast in such agreeable shades.

"His religion was sincere, not ostentatious; and such as inspired him with an universal benevolence towards all his fellow-subjects, not with bitterness against any part of them. He showed his firm adherence to it, as

modelled by our national constitution, and was constant to its offices of devotion, both in public and in his family. He appeared a champion for it, with great reputation, in the cause of the seven bishops, at a time when the church was really in danger. To which we may add, that he held a strict friendship and correspondence with the great Archbishop Tillotson, being actuated by the same spirit of candour and moderation, and moved rather with pity than indignation towards the persons of those who differed from him in the unessential parts of Christianity.

"His great humanity appeared in the minutest circumstances of his conversations. You found it in the benevolence of his aspect, the complacency of his behaviour, and the tone of his voice. His great application to the severer studies of the law had not infected his temper with any thing positive or litigious; he did not know what it was to wrangle on indifferent points, to triumph in the superiority of his understanding, or to be supercilious on the side of truth. He joined the greatest delicacy of good breeding to the greatest strength of reason. By approving the sentiments of a person, with whom he conversed, in such particulars as were just, he won him over from those points in which he was mistaken; and had so agreeable a way of conveying knowledge, that whoever conferred with him grew the wiser, without perceiving that he had been instructed. We may probably ascribe to this masterly and engaging manner of conversation, the great esteem which he had gained with the late queen, while she pursued those measures which had carried the British nation to the highest pitch of glory; notwithstanding she had entertained many unreasonable prejudices against him, before she was acquainted with his personal worth and behaviour.

"As in his political capacity we have before seen how much he contributed to the establishment of the protestant interest, and the good of his native country, he was always true to these great ends. His character was

uniform and consistent with itself, and his whole conduct of a piece. His principles were founded in reason, and supported by virtue, and therefore did not lie at the mercy of ambition, avarice, or resentment. His notions were no less steady and unshaken than just and upright.

"In a word, he concluded his course among the same well-chosen friendships and alliances with which he began it.

"This great man was not more conspicuous as a patriot and a statesman, than as a person of universal knowledge and learning. As, by dividing his time between the public scenes of business and the private retirements of life, he took care to keep up both the great and good man; so, by the same means, he accomplished himself not only in the knowledge of men and things, but in the skill of the most refined arts and sciences. That unwearied diligence, which followed him through all the stages of his life, gave him such a thorough insight into the laws of the land, that he passed for one of the greatest masters of his profession at his first appearance in it. Though he made a regular progress through the several honours of the long robe, he was always looked upon as one who deserved a superior station to that he was possessed of, till he arrived at the highest dignity to which those studies could advance him.

"He enjoyed, in the highest perfection, two talents which do not often meet in the same person; the greatest strength of good sense, and the most exquisite taste of politeness. Without the first, learning is but an incumbrance, and without the last, is ungraceful. My Lord Somers was master of these two qualifications in so eminent a degree, that all the parts of knowledge appeared in him with such an additional strength and beauty, as they want in the possession of others. If he delivered his opinion of a piece of poetry, a statue, or a picture, there was something so just and delicate in his observations, as naturally produced pleasure and assent in those who heard him.

"His solidity and eloquence, improved by the reading of the finest authors, both of the learned and modern languages, discovered itself in all his productions. His oratory was masculine and persuasive, free from every thing trivial and affected. His style in writing was chaste and pure, but at the same time full of spirit and politeness, and fit to convey the most intricate business, to the understanding of the reader, with the utmost clearness and perspicuity. And here it is to be lamented that this extraordinary person, out of his natural aversion to vain glory, wrote several pieces, as well as performed several actions, which he did not assume the honour of: though, at the same time, so many works of this nature have appeared, which every one has ascribed to him, that I believe no author of the greatest eminence would deny my Lord Somers to have been the best writer of the age in which he lived.

"This noble lord, for the great extent of his knowledge and capacity, has been often compared with the Lord Verulam, who had also been chancellor of England. But the conduct of these two extraordinary persons, under the same circumstances, was vastly different. They were both impeached by a house of commons. One of them, as he had given just occasion for it, sank under it, and was reduced to such an abject submission as very much diminished the lustre of so exalted a character: but my Lord Somers was too well fortified in his integrity, to fear the importance of an attempt upon his reputation; and though his accusers would gladly have dropped their impeachment, he was instant with them for the prosecution of it, and would not let that matter rest till it was brought to an issue; for the same virtue and greatness of mind, which gave him a disregard of fame, made him impatient of an undeserved reproach.

"There is no question but this wonderful man will make one of the most distinguished figures in the history of the present age; but we cannot expect that his merit will shine out in its proper light, since he wrote many things which are not published in his name; was

at the bottom of many excellent counsels, in which he did not appear; did offices of friendship to many persons who knew not from whom they were derived; and performed great services to his country, the glory of which was transferred to others: in short, since he made it his endeavour rather to do worthy actions than to gain an illustrious character."

Horace Walpole has himself sketched in a few words the most striking features of Lord Somers's character. * "He was one of those divine men, who, like a chapel in a palace, remain unprofaned, while all the rest is tyranny, corruption, and folly. All the traditional accounts of him, the historians of the last age and its best authors, represent him as the most incorrupt lawyer, and the honestest statesman, as a master orator, a genius of the finest taste, and a patriot of the noblest and most extensive views; as a man who dispensed blessings by his life, and planned them for posterity." "He was," says Burnet †, "very learned in his own profession, with a great deal more learning in other professions, in divinity, philosophy, and history. He had a great capacity for business, with an extraordinary temper; for he was fair and gentle, perhaps to a fault, considering his post. So that he had all the patience and softness, as well as the justice and equity, becoming a great magistrate."

Such are the representations of his character given by those whose opinions, on political subjects, coincided with his own; but we also possess a portrait of him drawn by the unfriendly hand of one who, in earlier life, is said to have been indebted to him for various benefits, and who, as we have seen, had formerly painted him in very different colours. Where his political interests were concerned (for it would scarcely be correct to attribute his conduct to *principle*), Swift is always to be distrusted, and, in drawing the following character, must be considered as performing the duty of a hired partisan. It is contained in his "History of the last Years of the

* Works, vol. i. p. 480. † Own Times, vol. ii. p. 107. fol. ed.

Queen." "The Lord Somers may very deservedly be reputed the head and oracle of that party: he has raised himself, by the concurrence of many circumstances, to the greatest employments of the state, without the least support from birth or fortune; he has constantly, and with great steadiness, cultivated those principles under which he grew. That accident, which first produced him into the world, of pleading for the bishops whom king James had sent to the Tower, might have proved a piece of merit as honourable as it was fortunate; but the old republican spirit, which the revolution had restored, began to teach other lessons; that since we had accepted a new king from a Calvinistical commonwealth, we must also admit new maxims in religion and government. But since the nobility and gentry would probably adhere to the established church, and to the right of monarchy as delivered down from their ancestors, it was the practice of these politicians to introduce such men as were perfectly indifferent to any or no religion, and who were not likely to inherit much loyalty from those to whom they owed their birth: of this number was the person I am now describing. I have hardly known any man with talents more proper to acquire and preserve the favour of a prince; never offending in word or gesture, in the highest degree courteous and complaisant, wherein he set an excellent example to his colleagues, which they did not think fit to follow. But this extreme civility, so universal and undistinguished, and in private conversation, where he observes it as inviolably as if he were in the greatest assembly, is sometimes censured as formal. Two reasons are assigned for this behaviour; first, that, from the consciousness of his humble origin, he keeps all familiarity at the utmost distance, which otherwise might be apt to intrude; the second, that, being sensible how subject he is to violent passions, he avoids all incitements to them, by teaching those he converses with, by his own example, to keep a great way within the bounds of decency and respect. And it is, indeed, true, that no

man is more apt to take fire upon the least appearance of provocation, which temper he strives to subdue, with the utmost violence upon himself, so that his breast has been seen to heave, and his eyes to sparkle with rage, in those very moments when his words and the cadence of his voice were in the humblest and softest manner. Perhaps that force upon his nature may cause that insatiable love of revenge which his detractors lay to his charge, who consequently reckoned dissimulation among his chief perfections. Avarice he has none, and his ambition is gratified by being the uncontested head of his party. With an excellent understanding, adorned by all the polite arts of learning, he has very little taste for conversation, to which he prefers the pleasure of reading and thinking, and in the intervals of his time amuses himself with an illiterate chaplain, an humble companion, or a favourite servant." In the same spirit of depreciation, Swift, in a letter addressed to Lord Bolingbroke, says that "Somers's timorous nature, joined with the trade of a common lawyer, and the consciousness of a mean extraction, had taught him the regularity of an alderman or a gentleman-usher."

The character of Lord Somers as a lawyer, and especially as a constitutional lawyer, has always been held in the highest estimation. His celebrated argument in the great case of the Bankers * may be referred to as a proof of his professional abilities and extensive learning. It has been termed by Mr. Hargrave "one of the most elaborate judgments ever delivered in Westminster Hall." † In collecting books and pamphlets for the purposes of this argument, Lord Somers is said to have expended several hundred pounds. ‡

He was a most industrious collector both of manuscripts and printed tracts, and after his death his valuable manuscript collection came into the possession of the Hardwicke family, who were allied to him by marriage. It filled upwards of sixty volumes in quarto, and was deposited in the chambers of the Honourable

* State Trials, vol. xiv. p. 1. † Id. p. 3. ‡ Id. p. 39.

Charles Yorke, in Lincoln's Inn, where, in the year 1752, it was unfortunately destroyed by an accidental fire. From the fragments spared by the flames, Mr. Yorke collected a few papers which, after correcting the damaged passages with his own hand, he bound in a folio volume. From this volume a selection was given in the "Miscellaneous State Papers," published by the Earl of Hardwicke, in 1778, some of which have been referred to in the preceding memoir. "The world," says Lord Hardwicke*, "will do that justice to the collection, as not to suppose that these specimens from it, *immitis ignis reliquiæ*, will afford an adequate idea of its merits. It filled upwards of sixty volumes in quarto, and did not contain a paper from Lord Somers's pen which the most intimate friend would have wished to secrete, or the bitterest enemy could have fairly turned to his prejudice."

Many of the valuable pamphlets which Lord Somers had collected were published in the middle of the last century, in sixteen volumes quarto, usually known under the name of the *Somers' Tracts*, a work which was republished a few years since, under the superintendence of Sir Walter Scott, who has adopted a much more convenient and methodical arrangement of the materials. Lord Somers appears to have spared no expense in the formation of his library, and is said to have given upwards of five hundred pounds to "Tom Britton, the celebrated smallcoal man, of Clerkenwell," for his collection of choice pamphlets.†

* State Papers, vol. ii. p. 399. † Morgan's Phœnix Brit. vol. i. p. 558.

LORD MANSFIELD.

1704——1793.

The Honourable William Murray, the fourth son of Andrew, Viscount Stormont, was born at Perth, on the 2d of March, 1704, O.S. At the early age of three years he was removed to London, and in 1719 was admitted a king's scholar at Westminster. At the election, in 1723, he stood the first on the list of those destined to be sent to Oxford, and was entered of Christ Church on the 18th of June in that year. Both at Westminster and at Oxford he distinguished himself by his classical attainments, and after taking his degree of *M. A.*, he left the university in the year 1730, and spent some months in travelling abroad. On his return, he was called to the bar in Michaelmas term 1731. It does not appear that at this period of his life he devoted much of his time to the study of his profession, though while a student he was in the habit of attending the meetings of a society of young men, who assembled for the purpose of discussing legal questions. The classical tastes and literary attainments of Mr. Murray led him to prefer the society of scholars and men of genius to that of his professional brethren. "When he first came to town," says Johnson, "he drank champagne with the wits."

The rank, the personal character, and the reputation which he had acquired at the university, all contributed to Mr. Murray's success. It has been said, that for some time after he was called to the bar he was without any practice, and that he had been heard to say, that he never knew the difference between a total want of employment and an income of 3000*l.* a year.* It appears, however, that in 1732, the year after his being called, he was engaged in an important appeal case, in which the attorney and solicitor-general were employed, and

* Character of Lord Mansfield, by Mr. Butler, Seward's Anecdotes, vol. iv. p. 492.

that in the two following years he was very frequently retained in similar cases before the house of lords.*

The frequent appearance of Mr. Murray in cases of appeal has been alluded to by Pope. The particular period at which the poet and Mr. Murray became acquainted does not appear, but it is probable that it was soon after the return of the latter from his travels. One of his biographers tells us, that "one day he was surprised by a gentleman of Lincoln's Inn, who took the liberty of entering his room without the ceremonious introduction of a servant, in the singular act of practising the graces of a speaker at a glass, while Pope sate by in the character of a friendly preceptor." † Of the friendship of Pope and Murray, Warburton has said, "Mr. Pope had all the warmth of affection for this great lawyer; and indeed no man ever more deserved to have a poet for his friend, in the obtaining of which, as neither vanity, party, nor fear had a share, so he supported his title to it by all the offices of a generous and true friendship." ‡ In the year 1737, Pope published his imitation of the sixth epistle of the first book of Horace, which he dedicated to Mr. Murray, and in which he introduced him in the following flattering lines:—

"Go then, and if you can admire the state
Of beaming diamonds and reflected plate,
Procure a taste to double the surprise,
And gaze on Parian charms with learned eyes;
Be struck with bright brocade or Tyrian dye,
Our birth-day nobles' splendid livery.
If not so pleased, at council-board rejoice
To see their judgments hang upon thy voice;
From morn to night, at Senate, Rolls and Hall.
Plead much, read more, dine late, or not at all.
But wherefore all this labour, all this strife,
For fame, for riches, for a noble wife?
Shall one whom native learning, birth conspired
To form, not to admire, but be admired,
Sigh while his Chloe, blind to wit and worth,
Weds the rich dulness of some son of earth?
Yet time ennobles or degrades each line;
It brighten'd Craggs's, and may darken thine.
And what is fame? the meanest have their day;
The greatest can but blaze and pass away.
Graced as thou art with all the power of words,
So known, so honour'd, in the house of lords—

* Holliday's Life, p. 28. † Id. p. 24. ‡ Notes on Imitations of Horace.

Conspicuous scene! another yet is nigh
More silent far, where kings and poets lie;
Where Murray (long enough his country's pride)
Shall be no more than Tully or than Hyde!"

In the course of the same year Pope published his imitation of Horace's Ode to Venus, in which he again introduces his friend Murray.

"Again? new tumults in my breast?
Ah, spare me, Venus! let me, let me rest!
I am not now, alas! the man,
As in the gentle reign of my Queen Anne.
Ah sound no more thy soft alarms,
Nor circle sober fifty with thy charms.
Mother too fierce of dear desires,
Turn, turn to willing hearts your wanton fires;
To *number five** direct your doves,
There spread round MURRAY all your blooming loves;
Noble and young, who strikes the heart
With every sprightly, every decent part;
Equal the injured to defend,
To charm the mistress or to fix the friend;
He, with a hundred arts refined,
Shall stretch thy conquests over half the kind.
To him each rival shall submit,
Make but his riches equal to his wit."

It is said that at this period of his life Mr. Murray unsuccessfully addressed a lady of great wealth, to which allusion is made in both of the poems above mentioned.

The celebrated conveyancer Mr. Booth [Note 44.] was amongst the most valued of his early friends. The following affectionate letter, addressed to him in 1735, is a pleasing specimen of Mr. Murray's epistolary style: —

"My dear friend,

"I received yours last night. I cannot but applaud the protection you give a sister, whom I know you love tenderly; yet it seems a little rash to carry your beneficence so far as to dry up the source of all future generosity; and I am sure it is greatly against the interest of every one, who has the least dependence upon you, that you should do any thing which makes it at all difficult for you to persevere in a way where you must at last succeed. Of this I have no doubt: and, therefore, it is as superfluous to add my advice for your coming to town immediately, as it would be to tell you that I omit no opportunity of mentioning your name, and promoting your

* No. 5. King's Bench Walk.

interest. You cannot fail but by staying in the country, and suffering people who have not half your merit to step in before you. With regard to every thing you say of Mr. Pigot, we will talk more at large hereafter: I as little think he will bring you into his business while he lives, as that you can be kept out of a great part of it when he dies. I am at present consulted upon a devise settlement of his, whereby a great estate is left to a noble Roman Catholic family, which I am very clear is good for nothing. Can you contrive a way by which an estate can be left to a papist? Though I have no more doubt of the case put to me, than whether the sun shines at noon, I told the gentleman who consulted me I would willingly stay to talk with a Roman Catholic conveyancer, &c., whom I expected soon in town, and named you to him.

"I own I am desirous you should come to town, and be assured the best service you can do your friends is, to put yourself in a way to serve them effectually. As to any present occasions you have, you know where to command while I have a shilling.

"I am, I do assure you, with great cordiality and esteem,

"Dear Booth,

"Your affectionate friend and faithful servant,

"W. MURRAY."

The first cause in the common law courts in which Mr. Murray distinguished himself was an action for criminal conversation brought by Theophilus Cibber against Mr. Sloper. Mr. Murray was junior counsel for the defendant, and in consequence of a sudden attack of illness, by which his leader was prevented from appearing in court, the duty of conducting the defence devolved upon him. At his request the cause was postponed for an hour, at the expiration of which time he again appeared in court, and conducted himself so ably, and made so forcible an address to the jury, that his client escaped with a very small penalty. From this time business poured in upon him from all sides, and an

income of a few hundreds was swelled at once to thousands. In after-life he frequently referred, with expressions of lively pleasure, to the event of this cause.

In the proceedings in parliament which took place subsequently to the celebrated Porteous riots in Edinburgh, Mr. Murray was employed to oppose the bill for incapacitating the provost, and fining the city; and, in consequence of his great exertions on this occasion, was presented with the freedom of the city of Edinburgh in a gold box.

In the year 1743, Mr. Murray was appointed solicitor-general, and was returned to parliament. In the house of commons his eloquence, and the respect with which he was regarded, soon rendered him a very efficient supporter of the administration.

At the trial of the rebel lords in 1746, Mr. Murray assisted in his character of solicitor-general. His speech on the trial of Lord Lovat is said to be one of the few of his speeches which have been authentically given.* It consists, indeed, of little more than a concise and lucid statement of the evidence. "Every gentleman," said the solicitor-general, "who has spoken in this trial has made it a rule to himself to urge nothing against the prisoner but plain facts and positive evidence without aggravation." The prisoner himself made some singular observations on the address of Mr. Murray. "My lords, I am very sorry I gave your lordships so much trouble on my trial, and I give you a million of thanks for being so good in your patience and attention whilst it lasted. I thought myself very much loaded by one Murray, who, your lordships know, was the bitterest enemy there was against me. I have since suffered by another Mr. Murray, who, I must say with pleasure, is an honour to his country, and whose eloquence and learning are much beyond what is to be expressed by an ignorant man like me. I heard him with pleasure, though it was against me. I have the honour to be his relation, though perhaps he neither knows it nor values it. I wish that his being born in the north may not

* Boswell's Johnson, vol. i. p. 153. 2d ed.

hinder him from the preferment that his merit and learning deserve. Till that gentleman spoke, your lordships were inclined to grant my earnest request, and to allow me further time to bring up my witnesses to prove my innocence; but it seems that has been overruled." * In concluding his defence, Lord Lovat added, "I have said all I have to say; and beg your lordships' pardon for the rude, long discourse I made to your lordships. I had great need of my cousin Murray's eloquence for half an hour, and then it would have been more agreeable." †

While Mr. Murray filled the office of solicitor-general, his attachment to the reigning family was called in question, but the charge was never substantiated. In his early life, he had been intimately acquainted with two gentlemen of the names of Fawcett and Stone, and with Dr. Johnson, afterwards bishop of Gloucester. Fawcett had become a provincial barrister, and recorder of Newcastle, and Stone had been appointed sub-governor of the young prince. At a dinner given by the dean of Durham, at which Fawcett, Lord Ravensworth, and other persons, were present, the preferment of Dr. Johnson being spoken of, Fawcett observed that "he was glad Johnson was so well off, for he remembered him a jacobite several years ago, and that he used to be with a relation of his who was very disaffected, one Vernon, a mercer, where the pretender's health was frequently drunk." This conversation having been repeated to Mr. Pelham, the minister, an enquiry was instituted into the facts; in the course of which, Fawcett stated, that though he could not recollect positively whether Johnson drank those healths, yet that Murray and Stone had done so several times. The delinquency of the bishop was now forgotten in the accusation against persons of such consideration in the state as the solicitor-general and the preceptor of the prince. Both the king and the minister were inclined to treat the charge slightly; but Stone, for his own justification, insisted on an enquiry. The matter was accordingly referred to the cabinet council, before whom Stone appeared and entered on his de-

* State Trials, vol. xviii. p. 827. † Id. p. 833.

fence.* The solicitor-general was then heard. He represented that he had been well affected to the present establishment ever since he could think on the subject. That when he went to Oxford he had taken the oaths to the government, and that he had done it with seriousness. That when he pleaded at the bar of the commons, he had studiously professed the principles by which the government was supported. That he had determined never to come into parliament but upon Whig principles; and that, with regard to office, it was not to be supposed that a person of Sir John Strange's well-known loyalty would have resigned to him, if he had not been thoroughly convinced of his sincerity. That ever since he had been in the king's service, he had got nothing by his employment (he spoke it not by way of complaint) but the ordinary perquisites of office, and had never recommended any friend of his own to preferment. That he had not been able to learn any objection to his conduct without doors, but the not having loaded the rebels with reproachful epithets, as if epithets would have added to their guilt. That he did not think such sort of language would be agreeable to his royal master; and that had he been employed for the crown against Sir Walter Raleigh, and that unfortunate person had been as guilty of high treason as the rebels, he would not have made Sir Edward Coke's speech against him for his estate. He concluded by acknowledging the indulgence of the lords in hearing him, and the justness and goodness of the king, who would not suffer his servants to be stabbed in the dark, but gave them an opportunity of clearing their innocence. He then took the voluntary oath, as the others had done, and gave a particular answer to every part of the charge, denying that he had ever been present at Mr. Vernon's when treasonable healths were drunk, and stating that he believed that gentleman incapable of such behaviour. Mr. Murray having concluded, the lords came to an unanimous resolution of reporting to the king, that there appeared to

* Doddington's Diary, sub anno 1753.

them no foundation for any part of the charge, and that it ought not to asperse the character of the bishop, or of either of the gentlemen affected by it.* The affair was afterwards brought before the house of lords by the Duke of Bedford, who moved an address to the king, that his majesty would be pleased to suffer the proceedings of the council to be laid before the house; but the motion being lost by a large majority, no further enquiry was made into the circumstances.

Although the imputation of jacobitism was thus indignantly and successfully met by Mr. Murray, yet with many persons he still suffered from suspicions which it was impossible to remove. In the house of commons his political adversaries did not hesitate to affront him with allusions, the application of which could not be misunderstood; and upon one occasion Mr. Pitt, in uttering a vehement invective against the university of Oxford, made an obvious reference to the supposed youthful opinions of Mr. Murray. He said, "that the body he meant (Oxford) was learned and respectable,—so much the more dangerous! He would mention what had happened to himself the last summer on a party of pleasure thither. They were at the window of the Angel Inn; a lady was desired to sing *God save great George our King!* The chorus was re-echoed by a set of young lads drinking at a college over the way, but with additions of rank treason. He hoped, as they were lads, that he should be excused for not having taken more notice of it. After this, walking down the high street, in a bookseller's shop he observed a print of a young Highlander with a blue ribbon. The bookseller, thinking he wanted to buy it, held it out to him. But what was the motto? *Hunc saltem everso juvenem!* This was the prayer of that learned body, for it was in Latin."—"Colours, much less words," adds Horace Walpole, who has reported this speech, "could not paint the confusion and agitation that worked in Murray's face during this almost apostrophe. His counte-

* Holliday.

nance spoke every thing that Fawcett had been terrified to prevaricate away." *

Of the political life of Mr. Murray, while, as solicitor and attorney-general, he supported the measures of government in the house of commons, it is difficult to gather any very accurate account; the debates of that day, where preserved at all, being reported in a manner which renders it impossible to rely upon their authenticity. In the Memoirs of Horace Walpole, at that period himself a member of the house, we find frequent mention of the solicitor-general, and always in language denoting the respect in which his talents were held. We are told that on the question of the Bavarian subsidy he made a very masterly speech, and we find him throughout all the debates on the regency bill distinguishing himself by his skill as a debater. He appears again in the debates on the Saxon treaty, and on various other occasions. Of his style as a parliamentary orator, and of the character which he held in the house, Walpole has spoken in terms of high commendation. "Murray, who at the beginning of the session was awed by Pitt, finding himself supported by Fox, surmounted his fears, and convinced the house, and Pitt too, of his superior abilities. He grew most uneasy to the latter. Pitt could only attack; Murray only defend. Fox, the boldest and ablest champion, was still more formed to worry; but the keenness of his sabre was blunted by the difficulty with which he drew it from the scabbard; I mean the hesitation and ungracefulness of his delivery took off from the force of his arguments. Murray, the brightest genius of the three, had too much and too little of the lawyer: he refined too much, and could wrangle too little, for a popular assembly. Pitt's figure was commanding; Murray's engaging, from a decent openness; Fox's dark and troubled; yet the latter was the only agreeable man. Pitt could not unbend; Murray in private was inelegant; Fox was cheerful, social, communicative. In conversation none of them had wit: Murray never had: Fox

* Memoirs, vol. i. p. 353.

had in his speeches, from clearness of head and asperity of argument. Pitt's wit was genuine; not tortured into the service, like the quaintnesses of my Lord Chesterfield." *

The latter nobleman, in a letter to his son, has also panegyrised the parliamentary talents of Mr. Murray. "Your fate depends upon your success as a speaker, and take my word for it, that success turns more upon manner than matter. Mr. Pitt, and Mr. Murray the solicitor-general, are, beyond comparison, the best speakers. Why? Only because they are the best orators. They alone can inflame or quiet the house; they alone are attended to in that numerous and noisy assembly, that you might hear a pin fall while either of them is speaking. Is it that their matter is better, or their arguments stronger, than other people's? Does the house expect extraordinary information from them? Not in the least; but the house expects pleasure from them, and therefore attends; finds it, and therefore approves."

Throughout the whole course of Murray's career in the house of commons, he was the invariable object of Pitt's unsparing invective. "Pitt," says Lord Waldegrave †, "undertook the difficult task of silencing Murray, the attorney-general, the ablest man, as well as the ablest debater, in the house of commons." Dissimilarity of character, no less than of political principles, added bitterness to the eloquence of Pitt. Despising the policy and distrusting the principles of Murray, he eagerly availed himself of every occasion which presented itself of expressing his indignant sarcasms. Brilliant and argumentative as was the oratory of Murray, he did not always possess the nerve necessary to ward off or to return assaults so terrible as these, and for the most part he bore, in agitated silence, the attacks to which he did not venture to make any reply. In a letter from Lord Holland ‡, describing the speech which has been just given, the writer says, "In both Mr. Pitt's

* Memoirs, vol. i. p. 490. † Memoirs, p. 31.
‡ Appendix to Lord Waldegrave's Mem. p. 153.

speeches every word was *Murray*, yet so managed that neither he nor any body else could or did take public notice of it, or in any degree reprehend him. I sate near Murray, who suffered for an hour." — "It was, perhaps, on this occasion," observes Mr. Butler *, "that Pitt used an expression that was once in every mouth. After Murray had suffered for some time, Pitt stopped, threw his eyes around, then fixing their whole power on Murray, said, 'I must now address a few words to Mr. Solicitor: they shall be few, but they shall be daggers.' Murray was agitated; the look was continued; the agitation increased. 'Judge Festus trembles,' exclaimed Pitt: 'he shall hear me some other day.' He sate down; Murray made no reply, and a languid debate is said to have shown the paralysis of the house."

On the death of Mr. Pelham, in the month of March, 1754, amongst the persons whose reputation and station in the country rendered it probable that they might be selected to fill the place of premier, Mr. Murray was named †; but various circumstances concurred to prevent such an appointment. The imputation, though unproved, of his youthful predilection for the pretender, rendered him more than suspected by the Whigs. Pitt and Fox were both opposed to his advancement, and even the chancellor regarded him with an eye of jealousy. ‡ In addition to these reasons it appears that he felt a disinclination to accept a place unconnected with his profession; and accordingly, on the formation of the Duke of Newcastle's administration, he was raised to the office of attorney-general, vacant by the promotion of Sir Dudley Ryder to the dignity of lord chief justice of the king's bench. As attorney-general, Mr. Murray continued to be one of the most efficient supporters of government in the house of commons, and in particular rendered himself most useful to the Duke of Newcastle, in supporting his weakness and covering his deficiencies.

When Mr. Murray had filled the office of attorney-gene-

* Reminis. vol. i. p. 154. † Doddington's Diary, p. 264.
‡ Walpole's Memoirs, vol. i. p. 329.

ral for about the space of two years, Sir Dudley Ryder, the chief justice of the king's bench, died, and the vacant office was immediately supplied by the appointment of Mr. Murray, whose ambition had long been the obtaining of this office, accompanied by a peerage.* No one had pretensions to compete with him, and he succeeded to the dignity with the common assent of the whole country. His high personal character, his extended professional reputation, his discreet conduct in public life, and his suavity of manners, all pointed him out as the fittest person to preside in the first common law court of the kingdom. The resignation of his place in parliament was, however, a most severe and painful inconvenience to the head of the administration, who had relied, in every case of emergency, upon the friendship and abilities of the attorney-general. "I wish you joy," observed Charles Townsend to Murray, on the rumour of his promotion, "or rather myself; for you will ruin the Duke of Newcastle by quitting the house of commons, and the chancellor by going into the house of lords." † If full credit may be given to the narrative of a memoir writer of the day ‡, the most extravagant offers were made to Mr. Murray by administration, in order to induce him to retain, even for a few months, his place in the house of commons. The loss of Minorca, under circumstances little creditable to the nation, had placed the ministers in a position of considerable difficulty, and they anxiously sought to secure the assistance which the talents and character of the attorney-general conferred. The duchy of Lancaster and a pension of 2000*l.*, with the reversion of a valuable post for his nephew, Lord Stormont, were the first offers made to him; and, subsequently, the amount of the proposed pension was increased to 6000*l.*; but Mr. Murray was firm. "He knew," says Walpole, "that it was safer to expound laws than to be exposed to them; and he said peremptorily at last, that if he was not to be chief justice, nei-

* Waldegrave's Memoirs, p. 56. † Walpole's Memoirs, vol. ii. p. 64.
‡ Horace Walpole. Id. p. 67. and Waldegrave's Mem. p. 60.

ther would he any longer be attorney-general." He received his appointment of chief justice on the 8th of November, 1756, and was immediately created a peer, by the title of Baron Mansfield, of Mansfield in the county of Nottingham.

On his elevation to the seat of chief justice, Lord Mansfield, contrary to the general usage, became a member of the cabinet; but the length of time during which he continued to sit there has not been very clearly ascertained. In the debates which took place in 1806, on the admission of Lord Ellenborough into the cabinet, the case of Lord Mansfield was insisted on and admitted to be a precedent. It was said by Lord Temple, that "he had that day seen the original writ of summons issued to Lord Mansfield. He could take upon himself to say, that the noble and learned lord attended every council from 1760 to 1763. In 1763 he left off attending the council, not from any sense of its incompatibility with his judicial situation, but, according to a letter of his own, which was in existence, because he would not sit with the Duke of Bedford, whose measures he disapproved of. In 1765 he returned again, and was named as one of the council of regency in the bill framed by Sir Fletcher Norton." * It appears, however, from his own declaration, that he ceased to take any part in the discussions of the cabinet, after the formation of the Rockingham administration in 1765, and that he never resumed his place at the table. †

On occasion of his taking leave of the society of Lincoln's Inn, the usual complimentary speech was delivered by the honourable C. Yorke, the son of Lord Hardwicke, upon whom the chief justice in reply pronounced the following panegyric: —

"I am too sensible, sir, of my being undeserving of the praises which you have so elegantly bestowed upon me, to suffer commendations so delicate as yours to insinuate themselves into my mind; but I have pleasure

* Cobbett's Parl. Debates, vol. vi. p 307.
† Parl. Hist. vol. xviii. p. 275. post, p. 189.

in that kind of partiality which is the occasion of them. To deserve such praises is a worthy object of ambition; and from such a tongue flattery itself is pleasing.

"If I have had, in any measure, success in my profession, it is owing to the great man who has presided in our highest courts of judicature the whole time I attended the bar. It was impossible to attend him, to sit under him every day, without catching some beams from his light. The disciples of Socrates, whom I will take the liberty to call the great lawyer of antiquity, since the first principles of all law are derived from his philosophy, owe their reputation to your having been the reporter of the sayings of their master. If we can arrogate nothing to ourselves, we can boast the school we were brought up in; the scholar may glory in his master, and we may challenge past ages to show us his equal.

"My Lord Bacon had the same extent of thought, and the same strength of language and expression; but his life had a stain.

"My Lord Clarendon had the same ability and the same zeal for the constitution of his country; but the civil war prevented his laying *deep* the foundations of law; and the avocations of politics interrupted the business of the chancellor.

"My Lord Somers came the nearest to his character; but his time was short, and envy and faction sullied the lustre of his glory.

"It is the peculiar felicity of the great man I am speaking of, to have presided very near twenty years, and to have shone with a splendour that has risen superior to faction, and that has subdued envy.

"I did not intend to have said, I should not have said so much on this occasion, but that in this situation with all that hear me, what I say must carry the weight of testimony rather than appear the voice of panegyric.

"For you, sir, you have given great pledges to your country; and large as the expectations of the public are concerning you, I dare say you will answer them.

"For the society, I shall always think myself honoured by every mark of their esteem, affection, and friendship, and shall desire the continuance of it no longer than while I remain zealous for the constitution of this country, and a friend to the interests of virtue."

Shortly after Lord Mansfield's promotion he became deeply engaged in the various ministerial arrangements which took place at that period. On the dismissal of Mr. Pitt, and the resignation of Legge, the chancellor of the exchequer, the seals of the latter office were, *pro tempore*, placed in the hands of Lord Mansfield, who, upon Lord Waldegrave being directed to form a new administration, was employed to negotiate with his friend the Duke of Newcastle and his old rival, Mr. Pitt, for their accession to the projected ministry. He was directed to attend the king at Kensington, for the ostensible object of delivering back the exchequer seals; but being admitted into the presence, the king consulted him confidentially on the subject of the administration, and finally intrusted him with full powers to negotiate with Pitt and the Duke of Newcastle. The power thus given him appears, however, to have been soon withdrawn. "The negotiation," says Lord Waldegrave *, "did not remain long in Lord Mansfield's hands; some thinking him too able, others that he was not enough their friend. The Duke of Newcastle, after what had passed, was ashamed and afraid to appear in the king's presence, so the treaty was undertaken and concluded by the Earl of Hardwicke." Many years afterwards, in one of the debates on the American war, Lord Mansfield alluded to the coalition which took place at this time, in effecting which he stated he had the honour of being an instrument. † The impression which an insight into these negotiations gave him, of the motives and views of the public men of that day, was most unfavourable, though probably most just. "I have been," he observes, in a speech delivered many

* Memoirs, p. 133. † Parl. Hist. vol. xviii. p. 966.

years afterwards *, "I have been in cabinets where the great struggle has not been to advance the public interests; not by coalition and mutual assistance to strengthen the hands of government, but, by cabals, jealousy, and mutual distrust, to thwart each other's designs, and to circumvent each other, in order to obtain power and preeminence."

Lord Mansfield had now attained the station which, it is very probable, he had always regarded as the summit of his ambition. His temperament, cautious even to timidity, had prevented him from preferring those just pretensions to political offices to which his fame and talents entitled him; the same reasons probably induced him to refuse the office of the great seal, when it was, upon more than one occasion, tendered to him. The resignation of the Duke of Newcastle, at the close of the year 1756, was shortly afterwards followed by that of Lord Hardwicke, the chancellor, and strenuous endeavours were made to induce Lord Mansfield's acceptance of the seals; but his attachment to the Duke of Newcastle, and his disinclination to a political life, led him to decline the office.† The great seal was consequently given in commission to Lord Chief Justice Willes, Mr. Justice Wilmot, and Mr. Baron Smyth. In the following year, it was again offered to Lord Mansfield, upon whose repeated refusal, it was committed to the hands of Sir Robert Henley, afterwards created Lord Northington.‡

One of the first occasions on which Lord Mansfield distinguished himself in the house of lords, after his elevation to the peerage, was in the debate on the bill for the amendment of the *habeas corpus* act. A gentleman having been impressed and confined in the Savoy, his friends applied for a writ of *habeas corpus*; but as the imprisonment was not for any criminal matter, it was found that the statute of 31 Car. 2. c. 2. did not apply. This palpable deficiency in the law attracted

* Parl. Hist. vol. xviii. p. 279. † Walpole's Memoirs, vol. ii. p. 106.
‡ Id. p. 226.

the attention of some friends to liberty, who introduced a bill into the house of commons for the purpose of extending the provisions of the statute of Charles II. to cases where the imprisonment was not upon any criminal charge. The bill passed the lower house, but was violently opposed in the house of lords by Lord Mansfield and Lord Hardwicke. The king himself talked openly against the bill at his levee, and the supporters of it were understood to incur his displeasure. The motives which actuated Lord Mansfield in his opposition to a bill so reasonable and so constitutional, are attributed by Horace Walpole to personal feelings; and such was the earnestness and so great the ingenuity and eloquence which he exerted on the occasion, that the bill was ultimately rejected. "The fate of the bill," says Horace Walpole, "which could not be procured by the sanction of the judges, Lord Mansfield was forced to take upon himself. He spoke for two hours and a half: his voice and manner, composed of harmonious solemnity, were the least graces of his speech. I am not averse to own that I never heard so much argument, so much sense, so much oratory united. His deviations into the abstruse minutiæ of the law served but as a foil to the luminous parts of the oration. Perhaps it was the only speech which, in my time at least, had real effect; that is, convinced many persons; nor did I ever know how true a votary I was to liberty, till I found that I was not one of the number staggered by that speech. I took as many notes of it as I possibly could; and, prolix as they would be, I would give them to the reader, if it would not be injustice to Lord Mansfield to curtail and mangle, as I should, by the want of connection, so beautiful a thread of argumentation." * In the year 1816, a bill † passed without opposition, similar in its provisions to that which was rejected by the efforts of Lord Mansfield.

On the occurrence of the disputes between England and her North American colonies, Lord Mansfield sup-

* Memoirs, vol. ii. p. 301. † 56 G. 3. c. 100.

ported the right of the mother country to tax the colonists, without any assent on their part; and in the debate which took place in the month of February, 1766. spoke at considerable length on the subject. Of that speech a copy, corrected with his lordship's own hand, has been preserved.* A great portion of it was directed in answer to Lord Camden, who had spoken against the right of taxation without assent. In reply to those arguments, Lord Mansfield insists upon the unintelligible doctrine of virtual representation.

"There can be no doubt but that the inhabitants of the colonies are represented in parliament, as the greatest part of the people of England are represented; among nine millions of whom, there are eight who have no votes in electing members of parliament. Every objection, therefore, to the dependency of the colonies upon parliament, which arises to it upon the ground of representation, goes to the whole present constitution of Great Britain; and I suppose it is not meant to new-model that too. People may form their own speculative ideas of perfection, and indulge their own fancies, or those of other men. Every man in this country has his particular notions of liberty; but perfection never did, and never can, exist in any human institution. For what purpose, then, are arguments drawn from a distinction in which there is no real difference, of a virtual and actual representation? A member of parliament, chosen for any borough, represents not only the constituents and inhabitants of that particular place, but he represents the inhabitants of every other borough in Great Britain. He represents the city of London, and all other the commons of this land, and the inhabitants of all the colonies and dominions of Great Britain; and is in duty and conscience bound to take care of their interests."

According to another report of his lordship's speech preserved in the Hardwicke Collection†, he advanced in the course of his argument doctrines which in other

* Holliday, p. 242. † Parl. Hist. vol. xvi. p. 172.

times would have subjected him to the well-merited censures of the commons. "In Great Britain the legislative is in parliament, the executive in the crown. The parliament first depended upon tenures. How did representation by election first arise? *Why, by the favour of the crown.*"

Lord Mansfield thus concluded:—"You may abdicate your right over the colonies. Take care, my lords, how you do so, for such an act will be irrevocable. Proceed then, my lords, with spirit and firmness, and when you shall have established your authority, it will then be a time to shew your lenity. The Americans, as I said before, are a very good people, and I wish them exceeding well; but they are heated and inflamed. The noble lord who spoke before concluded with a prayer; I cannot end better than by saying to it Amen! and in the words of Maurice, prince of Orange, concerning the Hollanders, 'God bless this industrious, frugal, and well-meaning, but easily-deluded people.'"

It may not be improper in this place to notice the part which, at subsequent periods, Lord Mansfield took with regard to the American question. In the stormy debate of the 7th of February, 1775, on the address to the king upon the disturbances in North America, his lordship stated, that this country was reduced to the alternative of adopting coercive measures, or for ever relinquishing her claim of sovereignty and dominion over the colonies. He argued also that the Americans were in a state of actual rebellion, and asserted the right of the mother country to repress them. In answer to some observations of the Duke of Grafton, he explained and defended the part that he had taken as a minister of the crown in the different administrations which had governed the country. "He said he had been a cabinet minister part of the last reign, and the whole of the present; that there was a nominal and an efficient cabinet; that for several years he acted as a member of the latter, and consequently deliberated with the king's minister; that, however, a short time previous to the

administration in which the noble marquis (Rockingham) presided at the head of the treasury, and some considerable time before the noble duke succeeded him in that department, he had prayed his majesty to excuse him, and from that day to the present he had declined to act as an efficient cabinet minister. He said he had lived with every administration on equal good terms, and never refused his advice when applied to; that particularly the noble marquis must recollect his giving him every assistance his poor abilities were capable of affording; nor was it his fault that the noble duke did not experience the same; for had he been applied to, he would have cheerfully rendered him every assistance in his power." The attack made upon Lord Mansfield by the Duke of Grafton was followed up by Lord Shelburne. "The noble and learned lord," said he, "has disclaimed having any direct concern in the present business, and endeavours to strengthen his bare assertions by shewing what little or no temptation he could have to interfere. But the noble lord knows, every noble lord in this house knows, a court has many allurements besides even place or emolument. His lordship denies any obligations or personal favours whatever. I am ready to give his lordship full credit for this declaration; but he will permit me, at the same time, to observe, that smiles may do a great deal; that if he had nothing to ask for himself, he has had friends, relations, and dependents amply provided for; I will not say beyond their deserts, but this I may say, much beyond their most sanguine expectations." In answer to these observations, Lord Mansfield, rising with great passion, said, "He thought it had been the leading characteristic of that assembly, when contrasted with the other house, which too often descended to altercations and personal reflections, always to conduct themselves like gentlemen; but he was sorry to see this rule departed from this evening for the first time. He charged the last noble lord with uttering the most gross falsehoods. He totally denied that he had any hand in framing all the bills of the last session;

and was certain that the law officers of the crown never asserted that they had no hand in them; but whether they had or not was of no consequence to him, for he was clear that the charge, when applied to him, was as unjust as it was maliciously and indecently urged."* In the debate which took place in November, 1778, on the Duke of Grafton's motion respecting the British forces in America, Lord Mansfield again spoke, and opposed all measures of conciliation, as only "furnishing America with grounds to erect new claims on, or to hold out terms of pretended obedience and submission."† In the following month, in the debate on the American prohibitory bill, he urged in strong language the necessity of active measures against the colonists. "What a Swedish general said to his men, in the reign of Gustavus Adolphus, is extremely applicable to us at present. Pointing to the enemy, who were marching down to engage them, said he, 'My lads, you see those men yonder: if you do not kill them, they will kill you.' If we do not, my lords, get the better of America, America will get the better of us."‡ In the following year Lord Mansfield opposed the Duke of Grafton's proposition for conciliation with America as "nugatory, ill-timed, and ineffectual §;" and shortly afterwards he spoke against a similar motion made by Lord Chatham.|| Thus throughout the whole of the great struggle for independence, into which the colonists were driven, Lord Mansfield uniformly opposed every measure which might have prevented the result he so greatly deprecated. It is fortunate that out of the most ill-judged and unjust designs, by the operation of that moral chemistry which is so little understood, the happiest events are not unfrequently found to proceed.

While, in politics, Lord Mansfield was thus adverse to those liberal principles which might have taught him to view the resistance of the colonists in another light, in matters of religion his opinions were fortunately of

* Parl. Hist. vol. xviii. p. 265. et seq. † Id. p. 955. ‡ Id. p. 1102.
§ Id. 1284. || Id. vol. xix. p. 351.

a much more tolerant character. In the earlier part of his judicial life several cases came before him in which he had occasion to express these opinions, which he did with a candour and openness highly creditable to his fame. One of the first of these cases was a question of evidence — the admissibility of a quaker's affirmation in an action of debt on the statute against bribery, 2 Geo. 2. c. 24. In delivering his judgment in this case, Lord Mansfield, in the first instance, laid down the following liberal rule for the construction of the act of toleration: — "I think it of the utmost importance, that all the consequences of the act of toleration should be pursued with the greatest liberality, in ease of the scrupulous consciences of dissenters on the one hand; but so as those scruples of conscience should not be prejudicial to the rest of the king's subjects: for a scruple of conscience entitles a party to indulgence and protection, so far as not to suffer for it; but it is of consequence that the subject should not suffer too." He then traces the history of the disabilities of the quakers: — "This sect sprang up during the troubles, and was found at the Restoration, with many other sects of non-conformists, equally scrupulous. At that time the law considered their scruples of conscience as a crime; and, therefore, they were not allowed to be set up as an excuse or justification of another offence. Therefore, when a quaker who was subpœnaed to give evidence absented himself, and an attachment issued in consequence of it, he could not, in excuse, say that his conscience prevented him from giving evidence, for that was a crime. So in the case of interrogatories, the consequence was, that he was obliged to answer or be committed to prison; and, if his obstinacy continued, he lay there for life.

"The experience of eight-and-twenty years, from the Restoration to the time of the Revolution, shewed that this obstinacy was not merely a pretence or colour given to right or wrong, but that it was a *scruple*, and that the sect was ready to go through all kinds of suffering in the pertinacious adherence to it.

"A more liberal way of thinking prevailed after the Revolution. The principles of toleration were explained and justified in consequence of the writings of Mr. Locke, Lord Somers, and other great men of those times; and a statute passed which, though not general, was very extensive in the relief it afforded to scrupulous consciences. The statute was 1 W. & M. c 18. commonly called the *Toleration Act.*"

In the course of his judgment, Lord Mansfield noticed the singular and unreasonable exemption in the statute 7 & 8 W. 3. c. 34., which prohibited the reception of a quaker's affirmation in criminal cases; an exception occasioned, as he said, "by a strong prejudice in the minds of the great men who passed the statute." Amongst the judicious improvements which have taken place in the criminal law in our own day, this extraordinary anomaly has been abolished.

In the year 1767, the Rev. James Webb, a catholic priest, was tried before Lord Mansfield on the prosecution of one Payne, a common informer, for saying mass, contrary to the provisions of the statute of William. In summing up to the jury, Lord Mansfield was almost unjustifiably astute in favour of the prisoner. Of the penal laws against the catholics he thus spoke: "In the beginning of the protestant religion, in order to establish it, they thought it in some manner necessary to enact those penal laws; for then the pope had great power, and they thought that they could not take too effectual means to prevent him exercising any part of it in these dominions; and the jesuits were then a very formidable body; and, apprehending great danger from them, knowing their close connections with the pope, the penal laws were chiefly designed against them. But now the case is quite altered: the pope has very little power, and seems to grow less and less daily. As for the jesuits, they are now banished out of most kingdoms in Europe, so that there is now nothing to fear from either of those quarters; neither was it ever the

design of the legislators to have these laws enforced by every common informer, but only at proper times and seasons, when they saw a necessity for it, and by proper persons appointed by themselves for that purpose; and yet, more properly speaking, they were never designed to be enforced at all, but were only made *in terrorem.*"*

In the year 1767, an opportunity was again afforded Lord Mansfield of expressing his liberal sentiments in matters of religion. By a by-law of the corporation of London, a fine was imposed upon those persons who refused to serve the office of sheriff; and several dissenters having been elected, and declining to accept the office because they could not conscientiously take the sacrament, pursuant to the directions of the corporation act, were fined. At length, a gentleman of the name of Evans, a dissenter, having been elected, refused either to serve or to pay the fine; upon which, an action was brought for the amount by the chamberlain of London in the sheriff's court, and judgment was given for the plaintiff. The defendant having appealed to the court of hustings, the judgment was affirmed; but upon an appeal to the court of the judges delegates, the judgments of the inferior courts were reversed. Upon this the city brought a writ of error in the house of lords, and the judges were directed to give their opinions. Lord Mansfield then, rising in his place as a peer, addressed the house in support of the judgment of the judges delegates. Of this speech, so honourable to the enlightened intellect and liberal views of Lord Mansfield, a full note was taken by Dr. Philip Furneaux, who was present at the delivery, and who afterwards submitted it to his lordship, by whom it was returned with a few alterations, and with an express consent to make it public as a genuine document.† In the course of this admirable speech his lordship laid down, in bold and broad terms, the great principle of religious liberty.

"The defendant in the present case pleads that he is a dissenter within the description of the toleration act;

* Holliday, p. 179. † Id. p. 251. Belsham's Life of Lindsay.

that he hath not taken the sacrament in the church of England within one year preceding the time of his supposed election, nor even in his whole life, and that he cannot in conscience do it.

" Conscience is not controllable by human laws, nor amenable to human tribunals. Persecution, or attempts to force conscience, will never produce conviction, and are only calculated to make hypocrites or martyrs.

" My lords, there never was a single instance, from the Saxon times down to our own, in which a man was ever punished for erroneous opinions concerning rites or modes of worship, but upon some positive law. The common law of England, which is only common reason or usage, knows of no persecution for mere opinions. For atheism, blasphemy, and reviling the Christian religion, there have been instances of persons prosecuted and punished upon the common law; but bare nonconformity is no sin by the common law; and all positive laws, inflicting any pains or penalties for nonconformity to the established rites or modes, are repealed by the act of toleration, and dissenters are thereby exempted from all ecclesiastical censures.

" What bloodshed and confusion have been occasioned from the reign of Henry IV., when the first penal statutes were enacted, down to the revolution in this kingdom, by laws made to force conscience! There is nothing certainly more unreasonable, more inconsistent with the rights of human nature, more contrary to the spirit and precepts of the Christian religion, more iniquitous and unjust, more impolitic, than persecution. It is against natural religion, revealed religion, and sound policy.

" Sad experience and a large mind taught that great man, the President De Thou, this doctrine. Let any man read the many admirable things which, though a papist, he hath dared to advance on this subject, in the dedication of his history to Henry IV. of France (which I never read without rapture), and he will be fully con-

vinced, not only how cruel but how impolitic it is to prosecute for religious opinions. * * *

"There was no occasion to revoke the edict of Nantes; the jesuits needed only to have advised a plan similar to that which is contended for in the present case: make a law to render them incapable of office; make another to punish them for not serving. If they accept, punish them (for it is admitted on all hands, that the defendant, in the cause before your lordships, is prosecutable for taking the office upon him)—If they accept, punish them; if they refuse, punish them: if they say yes, punish them; if they say no, punish them. My lords, this is a most exquisite dilemma, from which there is no escaping; it is a trap a man cannot get out of; it is as bad persecution as that of Procrustes: if they are too short, stretch them; if they are too long, lop them." *

The lords immediately affirmed the judgment of the delegates, reversing the judgment of the sheriff's court and of the court of hustings.

In the year 1770, Lord Mansfield supported the bill for preventing delays of justice by reason of privilege of parliament, upon which he spoke at considerable length. In the course of his speech, he took occasion to express a sentiment, which formed a remarkable feature of his character — his contempt of popularity. "It has been said by a noble lord on my left hand, that I likewise am running the race of popularity. If the noble lord means by popularity that applause bestowed by after-times on good and virtuous actions, I have long been struggling in that race, to what purpose all-trying time can alone determine; but if the noble lord means that mushroom popularity, that is raised without merit, and lost without a crime, he is much mistaken in his opinion. I defy the noble lord to point out a single action in my life, where the popularity of the times ever had the smallest influence on my determinations. I thank God, I have a more permanent and steady rule for my conduct — the dictates of my own breast. Those that have

* Holliday, p. 260. Parl. Hist. vol. xvi. p. 316.

foregone that pleasing adviser, and given up their minds to be the slaves of every popular impulse, I sincerely pity; I pity them still more, if their vanity leads them to mistake the shouts of a mob for the trumpet of fame. Experience might inform them, that many, who have been saluted with the huzzas of a crowd one day, have received their execrations the next; and many who, by the popularity of their times, have been held up as spotless patriots, have nevertheless appeared upon the historian's page, when truth has triumphed over delusion, the assassins of liberty. Why, then, can the noble lord think that I am ambitious of present popularity, that relic of folly and shadow of renown, I am at a loss to determine." *

Had Lord Mansfield wished to adopt the surest mode of avoiding the popularity he so earnestly deprecated, he could not have found a more favourable opportunity than was afforded him in the course of the year 1770. The public mind had been excited and irritated, in an unusual degree, by the events attending the celebrated Middlesex election, and the expulsion of Wilkes from the house of commons. A general dissatisfaction had pervaded the nation, and the metropolis had been the scene of very serious riots. In the midst of these discontents appeared "The Letters of Junius," the most remarkable and effective work in the political literature of England. It was obvious that government could not suffer a production like this to pass unnoticed. Accordingly, on the appearance of the celebrated letter to the king, informations were filed by the attorney-general against Woodfall, the original printer and publisher, Almon, Miller, Say, Robinson, and Baldwin, who had republished it in various forms. The first case brought to trial was that against Mr. Almon, before Lord Mansfield and a special jury, on the 2d of June, 1770, when it was proved for the crown, that a copy of the libel had been bought at the shop of the defendant, from a person acting there as his servant. Mr. Serjeant Glynn, for the defendant,

* Parl. Hist. vol. xvi. p. 977.

insisted that a man could not be made a criminal by the act of his servant; but Lord Mansfield having directed the jury, that a sale by the servant was evidence, when not contradicted or explained, of a publication by the master, on the principle that whatever a man does by another he does himself, the jury found a general verdict of *guilty*.*

In the ensuing term, Almon's counsel moved for a new trial, contending that there was no proof whatever of a *criminal intention* in his client, or even the least knowledge by him of the libel having been sold in his shop. A new trial was refused, on the ground that the publication at the shop of the defendant was *primâ facie* evidence of a guilty publication *by him*. The rule was thus stated by Lord Mansfield: — "The buying the pamphlet in the public open shop of a known professed bookseller and publisher of pamphlets, of a person acting in the shop, *primâ facie* is evidence of a publication by the master himself; but it is liable to be contradicted, where the fact will bear it, by contrary evidence tending to exculpate the master, and to show that he was not privy nor assenting to it, nor encouraging it; and this being *primâ facie* evidence of a publication by the master himself, stands good till answered by him; and if not answered at all, becomes *conclusive* so far as to be sufficient to convict him." The other judges of the king's bench concurred in opinion with Lord Mansfield. The judgment of the court in this case was made the subject of much severe animadversion, both within and without the walls of parliament, and the conduct of Lord Mansfield upon the trial was commented upon, in the house of commons, in the harshest manner by Mr. Dunning.† This case has frequently been considered as an authority for the broad position, that in prosecutions for libel a man is responsible for the act of his servant; a position which, in fact, it does not establish.

On the 13th of June, the information against Mr.

* State Trials, vol xx. p. 803.
† Parl. Hist. vol. xvi. p. 1279, and post, Life of Dunning.

Woodfall came on for trial, and Lord Mansfield, in his summing up, directed the jury, " that the printing and sense of the paper were alone what the jury had to consider of." * The jury, after much deliberation, found the defendant " Guilty of printing and publishing *only*." Upon this, two applications were made to the court of king's bench. The first, by the defendant in arrest of judgment; the second, on behalf of the crown, to enter the verdict according to the legal finding of the jury. In delivering the opinion of the court, which was that a *venire de novo* ought to issue, Lord Mansfield took occasion to justify the direction which he had given to the jury. " That the law," said he, " as to the subject matter of the verdict, is as I have stated, has been so often unanimously agreed by the whole court upon every report I have made of a trial for a libel, that it would be improper to make it a question now in this place. Amongst those that concurred, the bar will recollect the dead and the living not now here. And we all again declare our opinion, that the direction is right and according to law." †

The information against Miller was tried on the 18th July, when Lord Mansfield directed the jury ‡ in the following manner: " I have the satisfaction to know, that if I should be mistaken in the direction I am about to give as to your duty on the present occasion, it will not be final and conclusive; but it is under the full conviction of my own mind, that I am warranted by the uniform practice of past ages, and by the law of the land, that I inform you that the question for your determination is, whether the defendant printed and published a paper of such tenor and meaning as is charged by the information. If the tenor had been wrong, the prosecution would at once have fallen to the ground; but that is not objected to, nor is any meaning suggested by the defendant different to that supplied by the filling up the blanks in the information. If you find the defendant *not guilty*, you find that he did not print or publish as set forth:

* State Trials, vol. xx. p. 900. † Id. p. 920. ‡ Id. p. 869.

if you find him *guilty*, you find that he did print and publish a paper of the tenor and meaning set forth in the indictment. Your verdict finally establishes that fact; but you do not by that verdict find whether that production was legal or illegal: for should the defendant be found guilty, he may arrest the judgment, by insisting there is nothing illegal in this paper, and may carry this matter before the highest court of judicature in the kingdom." The incongruity of this doctrine seems to have forced itself even upon the mind of Lord Mansfield, who at the conclusion of the summing up added, "If you choose to determine the point of law, you should be very sure, for your conscience' sake, that your determination is law; but if the law was in every case to be determined by juries, we should be in a miserable condition, as nothing could be more uncertain, from the different opinions of mankind."

The jury, after consulting together for several hours, delivered a verdict of Not guilty, at the chief justice's house in Bloomsbury Square. They had been followed from Guildhall by a great concourse of people, who, on the announcement of the verdict, testified their satisfaction by loud and repeated acclamations.*

In another case, which occurred in the course of the same year, Lord Mansfield incurred additional, though undeserved, odium. Two informations having been filed against the celebrated Wilkes, for the publication of No. 45 of the *North Briton*, and of another libel, and the cases standing for trial, an application was made to Lord Mansfield, at chambers, for leave to amend the records in a formal point. Leave was given to amend, the causes proceeded, and Mr. Wilkes, not appearing, was outlawed. Some time afterwards, having appeared, he endeavoured to reverse the outlawry, and loud complaints were made by his friends against Lord Mansfield for the part he had taken in allowing the amendments to be made. On delivering his judgment in the writ of error brought by Mr. Wilkes, Lord

* State Trials, vol. xx. p. 896.

Mansfield, after examining the authorities, thus continued: — "But here let me pause:—it is fit to take some notice of the various terrors hung out; the numerous crowds which have attended, and now attend, in and about the hall, out of all reach of hearing what passes in court; and the tumults which, in other places, have shamefully insulted all order and government. Audacious addresses in print dictate to us, from those they call the people, the judgment to be given now, and afterwards upon the conviction. Reasons of policy are urged, from danger to the kingdom, by commotions and general confusion.

"Give me leave to take the opportunity of this great and respectable audience, to let the whole world know all such attempts are vain. Unless we have been able to find an error which will bear us out to reverse the outlawry, it must be affirmed. The constitution does not allow reasons of state to influence our judgments: God forbid it should! We must not regard political consequences, how formidable soever they might be: if rebellion was the certain consequence, we are bound to say, '*Fiat justitia, ruat cœlum.*' The constitution trusts the king with reasons of state and policy; he may stop prosecutions; he may pardon offences; it is his, to judge whether the law or the criminal should yield. We have no election. None of us encouraged or approved the commission of either of the crimes of which the defendant is convicted: none of us had any hand in his being prosecuted. As to myself, I took no part (in another place) in the addresses for that prosecution. We did not advise or assist the defendant to fly from justice: it was his own act; and he must take the consequences. None of us have been consulted, or had any thing to do with the present prosecution. It is not in our power to stop it: it was not in our power to bring it on. We cannot pardon. We are to say what we take the law to be: if we do not speak our real opinions, we prevaricate with God and our own consciences.

"I pass over many anonymous letters I have received.

Those in print are public, and some of them have been brought judicially before the court. Whoever the writers are, they take the wrong way. I will do my duty unawed. What am I to fear? that *mendax infamia* from the press, which daily coins false facts and false motives? The lies of calumny carry no terror to me. I trust, that my temper of mind, and the colour and conduct of my life, have given me a suit of armour against these arrows. If, during this king's reign, I have ever supported his government, and assisted his measures, I have done it without any other reward than the consciousness of doing what I thought right. If I have ever opposed, I have done it upon the points themselves, without mixing in party or faction, and without any collateral views. I honour the king, and respect the people; but many things, acquired by the favour of either, are, in my account, objects not worth ambition. I wish popularity, but it is that popularity which follows, not that which is run after. It is that popularity which, sooner or later, never fails to do justice to the pursuit of noble ends by noble means. I will not do that which my conscience tells me is wrong, upon this occasion, to gain the huzzas of thousands, or the daily praise of all the papers which come from the press: I will not avoid doing what I think is right, though it should draw on me the whole artillery of libels, all that falsehood and malice can invent, or the credulity of a deluded populace can swallow. I can say with a great magistrate, upon an occasion and under circumstances not unlike, 'Ego hoc animo semper fui, ut invidiam virtute partam, gloriam, haud infamiam, putarem.'

"The threats go further than abuse: personal violence is denounced. I do not believe it: it is not the genius of the worst men of this country in the worst of times. But I have set my mind at rest. The last end that can happen to any man never comes too soon, if he falls in support of the law and liberty of his country (for liberty is synonymous to law and government). Such a shock, too, might be productive of public good: it might awake

the better part of the kingdom out of that lethargy which seems to have benumbed them; and bring the mad part back to their senses, as men intoxicated are sometimes stunned into sobriety.

"Once for all, let it be understood, that no endeavours of this kind will influence any man who at present sits here. If they have any effect, it would be contrary to their intent: leaning against their impression, might give a bias the other way. But I hope, and I know, that I have fortitude enough to resist even that weakness. No libels, no threats, nothing that has happened, nothing that can happen, will weigh a feather against allowing the defendant, upon this and every other question, not only the whole advantage he is entitled to from substantial law and justice, but every benefit from the most critical nicety of form, which any other defendant could claim under the like objection. The only effect I feel, is an anxiety to be able to explain the grounds upon which we proceed, so as to satisfy all mankind, that a flaw of form, given way to in this case, could not have been got over in any other."*

Wilkes having been imprisoned under the judgment of the court of king's bench for the publication of these libels, petitioned the house of commons for relief, alleging, amongst other grounds, the alteration of the record by the order of Lord Mansfield. The debate on this petition was one of the few occasions in which Mr. Blackstone appeared as a speaker in the house of commons. He shortly, but strenuously, defended Lord Mansfield, and concluded with moving, "that the complaint of Mr. Wilkes was an audacious aspersion on the chief justice, calculated to convey a gross misrepresentation of the fact, and to prejudice the minds of the people against the administration of public justice."

In the interminable debates which arose out of the proceedings connected with Mr. Wilkes, the conduct of Lord Mansfield, in matters of libel, became the subject of frequent discussion, and of much censure. In the

* State Trials, vol. xix. p. 1111.

debate on Lord Chatham's motion, of the 5th of December, 1770, declaring the capacity to be chosen a member of parliament an inherent right of the subject, his lordship took occasion to observe upon the modern manner of directing a jury from the bench, and giving judgment upon prosecutions for libel. Lord Mansfield, in reply, defended himself with considerable vigour, concluding his speech in the following words: —

"Judges, my lords, cannot go astray from the express and known law of the land. They are bound by oath punctually to follow the law. I have ever made it the rule of my conduct to do what was just, and, conscious of my own integrity, am able to look with contempt upon libels and libellers. Before the noble lord, therefore, arraigns my judicial character, he should make himself acquainted with facts. The scurrility of a newspaper may be good information for a coffee-house politician; but a peer of parliament should always speak from higher authority; though, if my noble accuser is no more acquainted with the principles of law in the present point than in what he advanced to support the motion, where he told us an action would lie against the house of commons for expelling Mr. Wilkes, I am fearful the highest authorities will not extend his ideas of jurisprudence nor entitle him to a patient hearing upon a legal question in this assembly.*

Lord Chatham in answer said, "My lords, if I conceive the noble lord on the woolsack right, or have been rightly informed by the public prints, from which, I candidly confess, I originally derived my information on this subject, the doctrine of the king's bench is, that a libel or not a libel is a question of law to be decided only by the court, and the sole power of the jury is to determine upon the fact of printing and publishing. This, my lords, I understand to be the noble lord's opinion; but this I never understood to be the law of England: on the contrary, I always understood that the jury were competent judges of the law as well as of the fact, and

* Parl. Hist. vol. xvi. p. 1305.

indeed, if they are not, I can see no essential benefit, arising from their institution, to the community.

"I am, therefore, desirous, my lords, I am earnestly desirous, that a day may be appointed for examining into the conduct of such judges as dare to establish this anti-constitutional practice in our courts. I am well assured from the most respectable authority, that the practice is immediately subversive of our dearest rights, our most invaluable liberties; and, profligate as the times may be, these are objects that interest should lead us to defend, even if we are wholly unactuated by principle."

Lord Chatham was followed by Lord Camden, who spoke of the administration of justice in terms calculated to wound the feelings of Lord Mansfield in the deepest manner.

"I am but too sensible, my lords," said he, "of the disreputable state of our law courts at present, and I heartily wish that some effectual method may be taken to recover their former credit, their former dignity. The best method of doing this is, in my opinion, to ascertain the truth or the falsehood of the popular reports, so boldly, so generally propagated against their mode of administering justice. Let us try, my lords, whether they are venal or whether they are otherwise. As a lawyer, I am a friend to the courts; and should be sincerely concerned, if the spirit of the times has fastened any unmerited stigma on their characters. If they are, as they ought to be, immaculate, we cannot do them a more essential service than to fix a day for enquiring into their conduct: we shall then be able to certify in their favour; we shall then give their probity the sanction of our evidence, and restore them to the esteem, to the confidence of their country. On the other hand, should the popular rumours have unhappily any foundation in fact, we owe it to ourselves and to posterity to drive them indignantly from the seats which they dishonour, and to punish them in an exemplary manner for their malversation." Lord Mansfield was then defended by the Duke of Grafton, who moved and carried an adjournment.

In the mean time, the opponents of Lord Mansfield in the other house were not idle. Serjeant Glynn having made a motion* for an enquiry into the administration of criminal justice, which was lost, and in the course of which the conduct of Lord Mansfield was severely commented on, his lordship, on the following day, desired that the house of lords might be summoned, he having some matters to communicate to the house. The lords accordingly met on the 10th of December, but instead of entering into any explanations, Lord Mansfield contented himself with informing the house that he had left with the clerk of the house a copy of the judgment of the court of king's bench in the case of *The King against Woodfall* †, and that their lordships might read it and take copies of it, if they pleased. On an enquiry from Lord Camden whether his lordship meant to have the paper entered on the journals, he replied, 'No, only to leave it with the clerk.' On the following day, Lord Camden said, "My lords, I consider the paper delivered in by the noble lord on the woolsack as a challenge directed personally to me, and I accept of it. He has thrown down the glove, and I take it up. In direct contradiction to him, I maintain that his doctrine is not the law of England. I am ready to enter into the debate whenever the noble lord will fix a day for it. I desire and insist that it may be an early one." He then delivered in six questions, founded on the paper deposited by Lord Mansfield with the clerk, desiring to have his lordship's answers thereon. Lord Mansfield replied, that this method of proposing questions was taking him by surprise; that it was unfair, and that he would not answer interrogatories. Lord Camden then pressed him to appoint a day for giving in his answers; and Lord Mansfield, after some hesitation, pledged himself to the house that the matter should be discussed, but ultimately refused to fix any day. In this manner did the discussions in the lords, on this subject, in which Lord Mansfield certainly betrayed his constitutional timidity, and suffered his op-

* Parl. Hist. vol. xvi. p. 1211. † Ante, p. 199.

ponents to use a tone of undue superiority and arrogance towards him, terminate. His conduct in relation to this charge will be examined hereafter.

In the celebrated riots of 1780, Lord Mansfield was a conspicuous sufferer. Although he had not taken any active part in the measures for the relief of the catholics; he incurred, in common with many other eminent persons, the hostility of the populace. The mob, which assembled round the houses of parliament on the 2d of June, not only assailed the lords and members who were supposed to favour the catholics with the most vehement abuse, but proceeded in many cases to personal violence. The Archbishop of York had his lawn sleeves torn off and flung in his face; the Bishop of Lincoln, after fainting in his carriage, was taken into a gentleman's house, from which he escaped in disguise; Lord Stormont's life was placed in the most imminent danger, and Lord Mansfield, who at that time officiated as speaker in the absence of the lord chancellor, bore upon his person, as he entered the house, evident marks of the ill usage of the rioters. After a debate, disturbed by the violence and vociferations of those without, the lords gradually retired, retreating through the darkness of the night, or escaping in hackney coaches, until, to the discredit and disgrace of their lordships' house, the Earl of Mansfield, in his 76th year, was left alone and unprotected, except by the officers of the house and his own servants. The tumults not having been suppressed at their commencement, increased on the second day so fearfully, as not only to strike individuals with dismay, but to threaten even the stability of the government itself. With a confidence in their power which their successes gave them, the rioters did not hesitate to announce publicly the particular mansions which they had devoted to destruction, amongst which was that of Lord Mansfield in Bloomsbury Square. His lordship, being aware of the intended attack, despatched a messenger to Sir John Hawkins, the magistrate, requesting

his immediate attendance.* Sir John, accompanied by a number of constables, proceeded without delay to Bloomsbury Square, where he found Lord Mansfield in a state of great agitation. The Archbishop of York, who resided in one of the adjoining houses, was present, and appeared to be more collected. By the advice of Sir John Hawkins, a detachment of military was sent for, who soon afterwards arrived. A consultation was then held as to the position in which the guards should be placed, when Lord Mansfield, notwithstanding the remonstrances of Hawkins, insisted that they should be stationed in the vestry of St. George's church. The commanding officer endeavoured, in vain, to dissuade him from suffering the troops to leave the house; but his lordship was peremptory, and the guards were marched to their station. The mob soon afterwards arrived, and in an inconceivably short space of time the walls of the house alone remained standing. The whole of the library of printed books and MSS., the private papers, the pictures, furniture, and other valuable effects, were all consumed. In order to show how disinterested was their enthusiasm, a large silver tankard, containing a considerable sum in guineas, was thrown into the blaze.

Sir Nathaniel Wraxall, who was an eye-witness of the conflagration, has left the following account of it:†—

"I was personally present at many of the most tremendous effects of the popular fury on the memorable 7th of June, the night on which it attained its highest point. About nine o'clock on that evening, accompanied by three other gentlemen, who, as well as myself, were alarmed at the accounts brought in every moment of the outrages committed, and of the still greater acts of violence meditated, as soon as darkness should favour and facilitate their further progress, we set out from Portland Place, in order to view the scene. Having got into a hackney coach, we drove to Bloomsbury Square, attracted to that spot by a rumour generally

* Miss Hawkins's Memoirs, vol. ii. p. 108. † Memoirs, vol. i. p. 319.

spread, that Lord Mansfield's residence, situate at the north-east corner, was either already burnt or destined for destruction. Hart-street and Great Russell-street presented each to the view, as we passed, large fires, composed of furniture taken from the houses of magistrates or other obnoxious individuals. Quitting the coach, we crossed the square, and had scarcely got under the wall of Bedford House, when we heard the door of Lord Mansfield's house burst open with violence. In a few minutes, all the contents of the apartments, being precipitated from the windows, were piled up, and wrapt in flames. A file of foot-soldiers arriving, drew up near the blazing pile; but without either attempting to quench the fire, or to impede the mob, who were, indeed, far too numerous to admit of their being dispersed, or even intimidated, by a small detachment of infantry. The populace remained masters; while we, after surveying the spectacle for a short time, moved on into Holborn, where Mr. Langdale's dwelling-house and warehouses afforded a more appalling picture of devastation. They were altogether enveloped in smoke and flame. In front had assembled an immense multitude of both sexes, many of whom were females, and not a few held infants in their arms. All appeared to be, like ourselves, attracted as spectators solely by curiosity, without taking any part in the acts of violence. The kennel of the street ran down with spirituous liquors, and numbers of the populace were already intoxicated with this beverage. So little disposition, however, did they manifest to riot or pillage, that it would have been difficult to conceive who were the authors and perpetrators of such enormous mischief, if we had not distinctly seen at the windows of the house men, who, while the floors and rooms were on fire, calmly tore down the furniture, and threw it into the street, or tossed it into the flames. They experienced no kind of opposition, during a considerable time that we remained at this place; but, a party of the horse-guards arriving, the terrified crowd instantly began to disperse; and we, anxious to gratify our farther cu-

riosity, continued our progress on foot, along Holborn, towards Fleet Market. The conduct of the lord chancellor had been more prudent. He admitted a serjeant's guard into his house in Great Ormond-street, and by a judicious display of this small force, which was marched and countermarched, so as to give it the appearance of fresh detachments arriving, he deterred the populace from making an attack."

It was afterwards the subject of regret to Lord Mansfield, that he had not displayed a similar vigour. "I shall never, indeed, forget," says Mr. Erskine *, "what I have heard the late mild and venerable magistrate, Lord Mansfield, say upon this subject, whose house was one of the first attacked in London. I have more than once heard him say, that, perhaps, some blame might have attached upon himself and others in authority, for their forbearance in not having directed force to have been *at the first moment* repelled by force; it being the highest humanity to check the infancy of tumults."

Lord Mansfield narrowly escaped in safety. For a few days he did not appear in court; but on the 14th of June he again took his seat. "The reverential silence," says Mr. Douglas, who at that time reported the decisions of the king's bench, "which was observed when his lordship resumed his place on the bench, was expressive of sentiments of condolence and respect, more affecting than the most eloquent address the occasion could have suggested." † The loss which Lord Mansfield sustained was irreparable. In pursuance of a vote of the house of commons, the Treasury, through the surveyor-general, made an application to his lordship for the particulars and amount, in order to arrange a proper compensation. To this application his lordship returned the following answer:—

"Besides what is irreparable, my pecuniary loss is great. I apprehended no danger, and therefore took no precaution. But how great soever that loss may be, I

* Speeches, vol. iii. p. 33. † Dougl. Rep. p. 446.

think it does not become me to claim or expect reparation from the state. I have made up my mind to my misfortune as I ought, with this consolation, that it came from those whose object manifestly was general confusion and destruction at home, in addition to a dangerous and complicated war abroad. If I should lay before you any account or computation of the pecuniary damage I have sustained, it might seem a claim or expectation of being indemnified. Therefore you will have no further trouble on this subject from," &c. &c.

"MANSFIELD."

On the trial of Lord George Gordon for his participation in these proceedings, Mr. Erskine, in the admirable speech which he delivered on that occasion, alluded with great felicity to the destruction of Lord Mansfield's house, and drew from it an argument in favour of his client. "Can any man living," he exclaimed, "believe that Lord George Gordon could possibly have excited the mob to destroy the house of that great and venerable magistrate, who has presided so long in this great and high tribunal, that the oldest of us do not remember him with any other impression than the awful form and figure of justice; a magistrate, who had always been the friend of the protestant dissenters against the ill-timed jealousies of the establishment;—his countryman too; and, without adverting to the partiality not unjustly imputed to men of that country, a man of whom any country might be proud?—No, gentlemen; it is not credible that a man of noble birth and liberal education (unless agitated by the most implacable personal resentment, which is not imputed to the prisoner,) could possibly consent to this burning of the house of Lord Mansfield." *

Amongst the poetical effusions which this catastrophe produced, the following verses appeared from the pen of Cowper:—

* Erskine's Speeches, vol. i. p. 112.

" When wit and genius meet their doom
In all-devouring flame,
They tell us of the fate of Rome,
And bid us fear the same.

" O'er Murray's loss the Muses wept:
They felt the rude alarm;
Yet bless'd the guardian care that kept
His sacred head from harm.

" There memory, like the bee that's fed
From Flora's balmy store,
The quintessence of all he read
Had treasured up before.

" The lawless herd, with fury blind,
Have done him cruel wrong:
The flowers are gone; but still we find
The honey on his tongue."

Of Lord Mansfield's political life after th year 1780 little remains to be said. He had long ceased, as he stated himself *, to be one of the efficient advisers of the crown; and it was only in his place as a peer, or by the exertion of that influence which always waits upon a man of high character in a high station, that he took any part in politics. During the famous coalition administration in 1782, he opposed, in conjunction with the chancellor, Lord Thurlow, the bill for the prevention of contractors sitting in parliament †, and that for excluding officers of the excise and customs from voting ‡. In the latter speech he controverted the then popular doctrine, that the influence of the crown was increasing, and ought to be diminished, and spoke with considerable energy against " the associations and meetings without doors for the express purpose of awing and controlling parliament." He also, in the course of the same year, spoke against the insolvent debtors' bill, considering it as an injury to credit. § One of the latest occasions upon which he addressed the house of peers was upon Lord Effingham's motion relative to the resolutions of the house of commons against Mr. Pitt's administration. His lordship opposed the resolutions moved by Lord Effingham, as tending to produce a breach between the two houses. The speech exhibited even more than

* Ante, p. 183.
† Parl. Hist. vol. xxii. p. 1362.
‡ Id. vol. xxiii. p. 95.
§ Id. p. 1104.

a usual portion of that constitutional timidity by which Lord Mansfield was distinguished: it was almost wholly composed of fears, and prognostications of evil.*

At length, after having presided for upwards of thirty-two years over the court of king's bench, the increasing infirmities of Lord Mansfield induced him to retire from his office. His resignation took place in the year 1788, upon which occasion the counsel practising in his court presented to him the following address, by the hands of Mr. Erskine:—

"To the Earl of Mansfield.

"My Lord,

"It was our wish to have waited personally upon your lordship in a body, to have taken our public leave of you, on your retiring from the office of chief justice of England; but judging of your lordship's feelings upon such an occasion by our own, and considering, besides, that our numbers might be inconvenient, we desire, in this manner, affectionately to assure your lordship, that we regret, with a just sensibility, the loss of a magistrate whose conspicuous and exalted talents conferred dignity upon the profession, whose enlightened and regular administration of justice made its duties less difficult and laborious, and whose manners rendered them pleasant and respectable.

"But, while we lament our loss, we remember with peculiar satisfaction, that your lordship is not cut off from us by the sudden stroke of painful distemper, or the more distressing ebb of those extraordinary faculties which have so long distinguished you among men; but that it has pleased God to allow to the evening of a useful and illustrious life the purest enjoyments which Nature has ever allotted to it—the unclouded reflections of a superior and unfading mind over its varied events; and the happy consciousness that it has been faithfully

* Parl. Hist. vol. xxiv. p. 515.

and eminently devoted to the highest duties of human society, in the most distinguished nation upon earth.

"May the season of this high satisfaction bear its proportion to the lengthened days of your activity and strength!"

To this address Lord Mansfield immediately returned the following answer:—

"To the Honourable T. Erskine, Serjeants' Inn.

"Dear sir,

"I cannot but be extremely flattered by the letter which I this moment have the honour to receive.

"If I have given satisfaction, it is owing to the learning and candour of the bar: the liberality and integrity of their practice freed the judicial investigation of truth and justice from difficulties. The memory of the assistance I have received from them, and the deep impression which the extraordinary mark they have now given me of their approbation and affection has made upon my mind, will be a source of perpetual consolation in my decline of life, under the pressure of bodily infirmities, which made it my duty to retire.

"I am, dear sir,
With gratitude to you and the other gentlemen,
Your most affectionate
And obliged humble servant,
"MANSFIELD."

Caen Wood, June 18. 1788.

It was Lord Mansfield's good fortune to retain, to an extended old age, the use of those faculties by which in early life he had been so much distinguished. In the year 1793, his nephew, Lord Stormont, having occasion to consult him on a cause in the house of lords, in which he was interested, found his mind perfectly clear and collected. A few days after this interview he was seized with an attack which soon terminated fatally:

he became drowsy, and complained of feeling very sleepy: he seemed to suffer no pain, but desired to be put to bed, saying, "Let me sleep; let me sleep:" after which he never spoke. He lay in this state for several days, and died without awaking from it, on the 20th of March, 1793, in the 89th year of his age. According to the directions of his will, he was buried in Westminster Abbey, in the same vault with Lady Mansfield.

Lord Mansfield died without issue; but the earldom, which was granted to him in 1776, descended to his nephew, Viscount Stormont.

Characters drawn by contemporary pens in general present more lively pictures of the individual than those which are only traced from the relation of others. Bishop Hurd has thus sketched Lord Mansfield's: "Mr. Murray, afterwards Earl of Mansfield, and lord chief justice of England, was so extraordinary a person, and made so great a figure in the world, that his name must go down to posterity with distinguished honour in the public records of the nation; for his shining talents displayed themselves in every department of the state, as well as in the supreme court of justice, his peculiar province, which he filled with lustre of reputation not equalled, perhaps, certainly not exceeded, by any of his predecessors. Of his conduct in the house of lords I can speak with the more confidence, because I speak from my own observation. Too good to be the leader, and too able to be the dupe, of any party, he was believed to speak his own sense of public measures; and the authority of his judgment was so high, that, in regular times, the house was usually decided by it. He was no forward or frequent speaker, but reserved himself, as was fit, for occasions worthy of him. In debate he was eloquent as well as wise; or rather, he became eloquent by his wisdom. His countenance and tone of voice imprinted the ideas of penetration, probity, and candour; but what secured your attention and assent to all he said, was his constant good sense, flowing in apt terms and in

the clearest method. He affected no sallies of the imagination, or bursts of passion; much less would he condescend to personal abuse, or to petulant altercation. All was clear, candid reason, letting itself so candidly into the minds of his hearers as to carry information and conviction with it. In a word, his public senatorial character very much resembled that of Messala, of whom Cicero says, addressing himself to Brutus, 'Do not imagine, Brutus, that for worth, honour, and a warm love of his country, any one is comparable to Messala.' So that his eloquence, in which he wonderfully excels, is almost eclipsed by those virtues, and even in his display of that faculty his superior good sense shows itself most; with so much care and skill has he formed himself to the truest manner of speaking! His powers of genius and invention are confessedly of the first size; yet he almost owes less to them than to the diligent and studious cultivation of judgment. In the commerce of private life Lord Mansfield was easy, friendly, and very entertaining, extremely sensible of worth in other men, and ready on all occasions to countenance and patronise it."

The judicial character of Lord Mansfield has been the subject of repeated panegyrics. The very long period during which he presided over the court of king's bench, his commanding talents, his high personal character, and his eloquence, all contributed to the great reputation which he enjoyed. No judge ever impressed so forcibly upon the jurisprudence of this country the peculiar qualities of his own mind. In scarcely any other instance can the influence of any judge of the courts of common law be traced by any marked improvement in the principles of law, or in the practice of the courts. With Lord Mansfield it was widely different; and many of the most important branches of modern law derive their character, and almost their existence, from his genius. The law of insurance has been frequently mentioned as an instance of the admirable manner in which his powerful mind created a system of law adapted to all the exigencies of society. When his lordship was raised

to the bench, the contract of insurance was little known, and a few unimportant *nisi prius* decisions were all that were to be found on the subject. Yet this branch of law, so little understood, grew up under his administration into a system, remarkable for the excellence of its principles, and the good sense and simplicity of its practice. In many other branches of law the same mind is visible, governing their principles, and reconciling their incongruities.* It has, indeed, been said, that Lord Mansfield leaned too much in his decisions to equitable principles; and certainly, in some instances, his opinions have been reviewed and overruled on this ground; yet, considering the anomalous scheme of the English law, and the expense and injustice which frequently arise from compelling a party who is clearly entitled to redress to seek it in another form, at the expense of infinite delay and vexation, it is difficult to say whether the preservation of the exact boundaries between the tribunals of the common law and of equity are wisely preserved at such a cost. The learning of Lord Mansfield has also been questioned, and, perhaps, his mind was not deeply imbued with the more recondite knowledge of his profession. So great, however, was the grasp of his intellect, and so lively and quick his powers of apprehension, that, on subjects where abstruse and recondite learning was required, he was always enabled to make, with small preparation, a brilliant display. He excelled particularly in the statement of a case, arranging the facts in an order so lucid, and with so nice a reference to the conclusions to be founded on them, that the hearer felt inclined to be convinced before he was in possession of the arguments.

His eloquence was peculiar; rather subtle and insinuating, than forcible and overpowering. His articulation was slow and distinct, and his voice remarkably sweet in all its tones. In his style of speaking he was often careless, sometimes using low and mean expressions, and he is said not always to have observed the

* See Evans's View of Lord Mansfield's Decisions.

rules of grammar. There was occasionally great confusion in his periods, which were involved in endless parentheses*; but such was the general effect of his eloquence, that these blemishes passed unnoticed.

In his demeanour on the bench he was distinguished at once by the dignity and by the courtesy of his manners. To the junior counsel he was kind and encouraging, and introduced in their favour the practice of *going through the bar*, allowing the senior counsel to make only one motion at a time, while they had previously been in the habit of making all their motions before the juniors could be heard. Occasionally Lord Mansfield indulged in sallies of humour, which were sometimes aimed at the gravity and abstraction of Mr. Serjeant Hill. "I have seen the serjeant," says Mr. Hawkins†, "standing up in the court, immovable as a statue, looking at no object, and arguing in support of his client's cause, so wrapt in the workings of his own mind, as, seemingly at least, to be insensible to any objects around him. In the midst of his argument, which was frequently so perplexed by parenthesis within parenthesis, as to excite the laughter of the whole court, Lord Mansfield would interrupt him with 'Mr. Serjeant! Mr. Serjeant!' He was rather deaf: the words were repeated without effect; at length, the counsel sitting near him would tell him that his lordship spoke to him: this roused him. Lord Mansfield would then address him with, 'The court hopes your cold is better.' All this was done with a tone, and in a manner, which showed that he wished to make the object of his apparent civility in fact an object of ridicule, and so far must be considered as having succeeded. How far it was perfectly decorous in a judge sitting in court to indulge this little mischief, for we do not wish to call it by a harsher name, others may decide; but, certainly, he was very agreeable to the bar in other respects. Indeed, whenever this foible did not show itself, his patient attention, his assisting questions, if

* Butler's Reminiscences. † Miss Hawkins's Memoirs.

I may be allowed the term, and his intuitive comprehension of what was submitted to his understanding, made him an exceedingly pleasant judge to those who were called to argue deep questions before him."

The judicial character of Lord Mansfield did not escape severe censure. One of the most serious charges against him, so often and so acrimoniously urged in parliament, and repeated by Junius, was his conduct in cases of libel, in which he invariably directed the jury, that it was no part of their province to consider whether the writing in question was or was not libellous, that being a matter of law reserved for the consideration of the court. That this opinion was erroneous cannot now be doubted; and the legislature has, by a declaratory act, pronounced upon its illegality. But, in estimating the culpability of Lord Mansfield in supporting a doctrine which is so decidedly opposed to the interests of freedom, it is necessary to look with accuracy to the circumstances under which that opinion was advanced. There have not been wanting, at any period of our judicial annals, authorities upon which the opinion of Lord Mansfield may be defended. Judges of learning and character have held those opinions to be law; and though, in selecting between opposing authorities, it may well be regretted that Lord Mansfield did not choose those which would have placed the liberty of the subject upon a surer foundation, it is not just to accuse him of a wilful and corrupt misinterpretation of the law. His political opinions did not lean to the extension of popular privileges, and those opinions necessarily governed him in the decision to which he came on this subject. That he himself was satisfied that he had given a correct exposition of the law cannot be doubted. "For twenty-eight years past," says Mr. Justice Buller, speaking of his lordship's directions in cases of libel,—"during which time we have had a vast number of prosecutions, in different shapes, for libels,—the uniform and invariable conduct of that noble judge has been to state the questions as I have just stated them to you;

and though the cases have been defended by counsel not likely to yield much, yet that point was never found fault with by them; and, often as it has been enforced by the court, they never have attempted yet, by any application, to set it aside. At last it came on in this way: the noble judge himself brought it on by stating to the court what his directions had always been, with a desire to know whether, in their opinions, the direction was right or wrong? The court was unanimously of opinion that it was right, and that the law bore no question or dispute.*" The appeal thus made by Lord Mansfield to the court does not betray any consciousness of having acted wrong; but, on the contrary, manifests an honest desire to examine and correct his opinions. That he was incapable of perverting the power which he thus vindicated, as the province of the court, to purposes injurious to liberty, we may admit with Mr. Erskine, who, in the argument arising out of the trial of the dean of St. Asaph, tendered his testimony to the integrity of the chief justice: "I am one of those," said he;" who could almost lull myself by these reflections from the apprehension of *immediate* mischief, even from the law of libel laid down by your lordship, if you were always to continue to administer it yourself. I should feel a protection in the gentleness of your character; in the love of justice, which its own intrinsic excellence forces upon a mind enlightened by science, and enlarged by liberal education; and in that dignity of disposition, which grows with the growth of an illustrious reputation, and becomes a sort of pledge to the public for security. But such a security is a shadow which passeth away. You cannot, my lord, be immortal, and how can you answer for your successor? If you maintain the doctrines which I seek to overturn, you render yourself responsible for all the abuses that may follow from them to our latest posterity." †

* Trial of dean of St. Asaph, Erskine's Speeches, vol. i. p. 219.
† Id. p. 261.

The political principles of Lord Mansfield were not strongly marked; but the bias of his mind was decidedly towards Toryism. In the expression of his opinions he was cautious and moderate, and was very unwilling to appear the advocate of strong or violent measures. This irresolute and almost timorous disposition was manifested in his conduct during the riots of 1780. He was the frequent object of popular invective, and fell under the lash of Junius, who has not hesitated to accuse him, not only of an early devotion to the house of Stuart, but of adhering to the principles of that family after deserting their fortunes. The unproved, and probably unfounded, charge of having been in his earlier years a partisan of the pretender, is treated by Junius as a fact too well established to be doubted: "Your zeal in the cause of an unhappy prince was expressed with the sincerity of wine, and some of the solemnities of religion. This, I conceive, is the most amiable point of view in which your character has appeared. Like an honest man, you took that part in politics which might have been expected from your birth, education, country, and connections. There was something generous in your attachment to the banished house of Stuart. We lament the mistake of a good man, and do not begin to detest him until he affects to renounce his principles. Why did you not adhere to that loyalty you once professed? Why did you not follow the example of your worthy brother? With him you might have shared in the honour of the pretender's confidence; with him you might have preserved the integrity of your character, and England, I think, might have spared you without regret. Your friends will say, perhaps, that although you deserted the fortune of your liege lord, you have adhered firmly to the principles which drove his father from the throne; that, without openly supporting the person, you have done essential service to the cause, and consoled yourself for the loss of a favourite family, by reviving and re-establishing the maxims of their government." *

* Letter to Lord Mansfield.

Lord Mansfield had no predilections that could lead him to look with favour upon popular doctrines. Himself a member of the aristocracy, and of a family which had given to the exiled princes one of their most devoted adherents, though probably in his own person free from the taint of jacobitism, there was nothing in his birth or natural connections to ally him with the people, or with their cause. Educated at Oxford, it was not probable that he should imbibe at that seat of learning any popular doctrines; and, upon his entrance into political life, he found little encouragement to alter the principles which he had always professed. From the earliest period of his parliamentary career, even down to its close, he was the marked object of attack to the popular orators in both houses of parliament. While a member of the commons, he was pursued by Pitt's unsparing invective; and in the lords he was followed, with all the pertinacity of political hatred, by the argumentative eloquence of Lord Camden. In almost every debate in which the name of Lord Mansfield occurs, it is immediately followed by that of Lord Camden. These circumstances must have contributed to fix in the mind of Lord Mansfield those sentiments of opposition to popular principles with which he began life. Upon various occasions, in the course of his judicial duties, he expressed his contempt for popularity and for popular judges, of which some instances have already been given in the course of the present memoirs.

That Lord Mansfield was honest and sincere in the expression of his political opinions there can be no reason to doubt: the circumstances already adverted to, as moulding his principles, are fully sufficient to establish their sincerity. It is to be borne in mind, also, that he frequently refused power; when he might have accepted it without any imputation upon his character; and therefore, if dishonest, his dishonesty must have been without object. If in any case he ever swerved from those principles of action which usually governed him, it is much more probable that such deviation was the

consequence of political timidity than of political dishonesty. He did not possess the bold and vigorous heart of Lord Chatham; and he was always ready rather to compromise measures than to push them to extremity. Hence his love of coalitions, which in every case of difficulty he was forward to recommend. His character was deficient in the highest of all political virtues — a determined resolution to serve the public without any regard to personal considerations, whether of fear or of favour.

In reviewing the political character of Lord Mansfield, it must not be forgotten that he was the first judge who openly discountenanced prosecutions founded on the harsh and cruel laws against the catholics, and that he boldly advocated the cause of the protestant dissenters. In his speech on the riots of 1780, he professed, in the following terms, the principles of toleration: —

"My principle of not wishing to disturb any man merely for conscience-sake is pretty well known; and many of those who are supposed to have formed the late mobs are not ignorant of my general tolerating principles when tolerating sectaries does not portend any mischief to the state. I have held these opinions respecting dissenters from the established church of all denominations; and the sect in particular who are usually called methodists well know, that, when attempts were repeatedly made to disturb them in the enjoyment of their religious worship, I have always discouraged them as unworthy of the protestant religion, the purity of whose doctrines, and not persecution, should be the only incentive to bring proselytes into her bosom. I was of the same opinion respecting the Roman catholics; and though, as I observed before, I had no hand, directly or indirectly, in the law, which has furnished a pretext for the late dangerous insurrections, I shall ever be of opinion that they, in common with the rest of his majesty's subjects, should be allowed every possible indulgence consistent with the safety of the state." *

* Parl. Hist. vol. xxi. p. 697.

In private life Lord Mansfield appears to have been much and justly beloved. His moral character was blameless. In his friendships he was warm and constant; in his charities judicious and discriminating, not bestowing small sums to relieve himself from present importunities, but assisting in a more substantial manner those who were capable of benefiting by such kindness. In society, and especially at his own table, he was remarkable for the liveliness and intelligence of his conversation, in which, however, he never indulged to the exclusion of others. One of his most distinguishing characteristics was the decorum and propriety that pervaded not only his actions but his manners, his personal appearance, and even his domestic establishment, in every department of which good sense and good taste were seen conjoined. Lord Mansfield's features were regular and expressive, and his presence graceful and dignified. His eye is said to have been remarkable for its intelligence and brilliancy. Cowper, in a letter to Hayley, has playfully but forcibly described the impression made upon him by Lord Mansfield's personal appearance:—"The monument of Lord Mansfield, for which you say Flaxman is engaged, will, I dare say, prove a noble effort of genius. Statuaries, as I have often heard an eminent one say, do not much trouble themselves about likeness, else I would give much to be able to communicate to Flaxman the perfect idea that I have of this subject such as he was forty years ago. He was at that time wonderfully handsome, and would expound the most mysterious intricacies of the law, or recapitulate both matter and evidence of a cause as long as from here to Eartham, with an intelligent smile on his features, that bespoke plainly the perfect ease with which he did it. The most abstruse studies, I believe, never cost him any labour."

Cumberland (the author), who had opportunities of seeing Lord Mansfield, has detailed the impression which his manners conveyed. "I was frequently," says he, "in his company; but have no right to think that I was

ever so far in his confidence as to render me a competent delineator of his character. Some few features, as they caught my observation, I may venture to trace out, and can say of him what every body who knew him in his social hours must say, without the risk of a mistake. I cannot recollect the time when, sitting at the table with Lord Mansfield, I ever failed to remark that happy and engaging art which he possessed of putting the company present in good humour with themselves; I am convinced they naturally liked him the more for his seeming to like them so well: this has not been the general property of all the witty, great, and learned men whom I have looked up to in my course of life.

"He would lend his ear most condescendingly to his company, and cheer the least attempt at humour with the prompt payment of a species of laugh, which cost his muscles no exertion, but was merely a subscription that he readily threw in towards the general hilarity of the table. He would take his share in the small talk of the ladies with all imaginable affability; he was, in fact, like most men, not in the least degree displeased at being incensed by their flattery. He was no great starter of new topics, but easily led into anecdotes of past times: these he detailed with pleasure; but he told them correctly rather than amusingly. I am inclined to think that he did not covet that kind of conversation that gave him any pains to carry on: his professional labours were great, and it was natural that he should resort to society more for relaxation and rest of mind than for any thing that could put him upon fresh exertions. Even dulness, so long as it was accompanied with placidity, was no absolute disrecommendation of the companion of his private hours; it was a kind of cushion to his understanding.

"I agree with the general remark, that he had the art of modelling his voice to the room or space in which he was; but I am not one of those who admired its tone: it was of a pitch too sharp to please my ear, and seemed more tuned to argumentation than urbanity.

His attentions, whenever he was pleased to bestow them, were not set off with any noble air, and I should rather call them civil than polite; for the stamp of his profession was upon him, and his deportment wanted gracefulness and ease. Pope, above all the sons of song, was his Apollo; but I suspect he had no real attachment to the Muses, and was merely civil to them in return for the compliments they had paid to him." *

The same writer has described an interview which took place between Lord Mansfield and Lord Sackville, shortly before the death of the latter nobleman, which may be regarded as characteristic of Lord Mansfield's temperament. "He wished to take his last leave of the Earl of Mansfield, then at Tunbridge Wells: I signified this to the earl, and accompanied him in his chaise to Stoneland. I was present at their interview. Lord Sackville, just dismounted from his horse, came into the room where we had waited a very few minutes, and staggered as he advanced to reach his hand to his respectable visitor. He drew his breath with palpitating quickness, and, if I remember rightly, never rode again. There was a death-like character in his countenance that visibly affected and disturbed Lord Mansfield, in a manner that I did not quite expect, for it had more of horror in it than a firm man ought to have shown, and less perhaps of other feelings than a friend, invited to a meeting of that nature, must have discovered, had he not been frightened from his propriety." †

Some of the opinions of Lord Mansfield, on subjects connected with the law and with legal literature, have been preserved by Mr. Charles Butler. ‡

"His lordship was sometimes charged with not entertaining the high notions which Englishmen feel, and, it is hoped, will ever feel, of the excellence of the trial by jury. Upon what this charge is founded does not appear: between him and his jury there never was the

* Memoirs, vol. ii. p. 344.
† Id. p. 249.
‡ Seward's Anecdotes, vol. iv. p. 498. Reminis. vol. i.

slightest difference of opinion. He treated them with unvaried attention and respect; they always showed him the utmost deference. It is remembered, that no part of his office was so agreeable to him as attending the trials at Guildhall. It was objected to him, that, in matters of libel, he thought the judges were to decide on its criminality. If his opinions on this subject were erroneous, the error was common to him with some of the most eminent among the ancient and modern lawyers. It was also objected to him, that he preferred the civil law to the law of England. His citations from the civilians were brought as a proof of his supposed partiality to that law; but they were rather occasional than frequent, and he seldom introduced them where the case was not of a new impression, so that the scantiness of home materials necessarily led him to avail himself of foreign ware. Sometimes, however, he intimated an opinion that the modification of real property in England, in wills and settlements, was of too intricate and complex a nature, and, for that reason, inferior to the more simple system of the Roman usufruct. The frequent necessity there is in our law to call in trustees, whenever property is to be transmitted or charged, so as to be taken out of immediate commerce, appeared to him an imperfection; and he wished the nature of our jurisprudence permitted the adoption of the rule of the civil law, that, when a debt is extinguished, the estate or interest of the creditor, in the lands or other property mortgaged for its security, is extinguished with it. It will be difficult to show any other instance in which he preferred the civil law to the law of England.

"In a conversation he permitted a student at the English bar to have with him, he expressed himself in terms of great esteem for Littleton, but spoke of Lord Coke, particularly of 'his attempting to give reasons for every thing, (that was his phrase,) with great disrespect. He mentioned Lord Hardwicke in terms of admiration, and of the warmest friendship: 'When his lordship

pronounced his decrees, wisdom herself,' he said, 'might be supposed to speak.'

"He observed with great satisfaction, that, during the long period of his chief justiceship, there had been but one case in which he had ultimately differed with his brother judges of the same court: that was the case of Perryn against Blake. He lamented the difference, but declared his conviction that the opinion he delivered upon it was right.

"He recommended Saunders' Reports. He observed, that the quantity of professional reading absolutely necessary, or even really useful, to a lawyer, was not so great as was usually imagined; but, he observed, 'that it was essential he should read much,' as he termed it, 'in his own defence; lest, by appearing ignorant on subjects which did not relate to his particular branch of the profession, his ignorance of that particular branch might be inferred.'

"Speaking of the great increase of the number of law books, he remarked that it did not increase the quantity of necessary reading, as the new publications frequently made the reading of the former publications unnecessary. Thus, he said, since Mr. Justice Blackstone had published his Commentaries no one thought of reading Wood's Institutes, or Finch's Law, which, till then, were the first books usually put into the hands of students. He said, that, when he was young, few persons would confess they had not read a considerable part at least of the year books: but that, at the time he was then speaking, few persons would pretend to more than an occasional recourse to them in very particular cases. He warmly recommended the part of Giannone's History of Naples which gives the history of jurisprudence, and of the disputes between the church and the state. He mentioned Chillingworth as a perfect model of argumentation."

SIR J. EARDLEY WILMOT.

1709—1792.

THE life of a distinguished and yet unambitious lawyer deserves to be recorded on account of its singularity. Some have sacrificed their principles to their ambition; Sir John Eardley Wilmot was unwilling even to abandon his ease.

He was born on the 16th August, 1709, at Derby, and was the second son of Robert Wilmot of Osmaston, in the county of Derby, Esq., and of Ursula, one of the daughters and co-heiresses of Sir Samuel Marow, of Berkswell, in the county of Warwick, Baronet. [Note 45.] He acquired the first rudiments of his education at the free school of Derby, and was afterwards the pupil of the Rev. Mr. Hunter, at Lichfield, where he was contemporary with Garrick and Johnson. In the year 1724, he was removed to Westminster School, and subsequently to Trinity Hall, Cambridge, where he contracted a passion for study and retirement, which formed one of the most prominent features of his character. This disposition led him to prefer the church as his profession; but, at the wish and by the advice of his father, he adopted the law, and, after prosecuting his legal studies with much diligence, he was called to the bar by the Society of the Inner Temple, in June, 1732.

Of the life of Mr. Wilmot, for many years after the commencement of his practice at the bar, few particulars have been recorded. In 1743 he married Sarah, the daughter of Thomas Rivett, Esq. of Derby, afterwards the representative of that borough in parliament. His practice during this period was chiefly confined to his native county; but his reputation in his profession gradually became considerable, and he attracted the esteem and friendship of Sir Dudley Ryder, the attor-

ney-general, and of the chancellor, Lord Hardwicke. In the year 1753, the rank of king's counsel, and subsequently of king's serjeant, was offered to Mr. Wilmot by the chancellor, both of which marks of favour he declined, in consequence of a wish to retire into the country. In a letter to a friend on this subject, he thus expresses himself: — "Consider it well, and tell me what you think of it, for when I have once struck the sail, I cannot set it up again; and, therefore, it requires a proper consideration and digestion in every respect: one thing I am sure of, that any change must be for the better. The withdrawing from the eyes of mankind has always been my favourite wish; it was the first and will be the last of my life." This design, which had also induced him to refuse several offers of a seat in parliament, Mr. Wilmot actually carried into effect, and settled in his native county as a provincial counsel. The ease, however, which he thus sought, he was not destined long to enjoy. Soon after his retirement, Sir Martin Wright, one of the judges of the court of king's bench, died, and it was rumoured that Mr. Wilmot was to receive the vacant appointment. By the person to whom it related, the report was discredited, as no application whatever had been preferred by himself for the office. An official intimation of his majesty's pleasure put the question beyond doubt; but it was not without much persuasion on the part of his friends, that Mr. Wilmot was induced to accept the honour thus offered to him. The influence to which he owed this appointment was unknown to him; but it probably proceeded from the friendship of Lord Hardwicke and Sir Dudley Ryder. He took his seat in Hilary term, 1755, and, according to custom, was knighted.

Another proof of the high esteem in which his professional character was held, was given in the following year, when, in conjunction with the Lord Chief Justice Willes and Sir S. S. Smythe, he was appointed one of the commissioners of the great seal, on the resignation

of Lord Hardwicke. In the opinion of many persons, Sir Eardley Wilmot was the person to whose sole custody the great seal would shortly be committed, an event, the possibility of which he seems to have regarded with much apprehension. In a letter to his brother, Sir Robert Wilmot, he says, "The acting junior of the commission is a spectre I started at, but the sustaining the office alone I must and will refuse at all events. I will not give up the peace of my mind to any earthly consideration whatever. Bread and water are nectar and ambrosia when contrasted with the supremacy of a court of justice."

In the year 1757, Sir Eardley Wilmot had a most remarkable escape at Worcester, the particulars of which are related by him in the following letter to his wife:—

"I send this by express, on purpose to prevent your being frightened, in consequence of a most terrible accident at this place. Between two and three, as we were trying causes, a stack of chimneys blew upon the top of that part of the hall where I was sitting, and beat the roof down upon us; but, as I sat up close to the wall, I have escaped without the least hurt. When I saw it begin to yield and open, I despaired of my own life, and the lives of all within the compass of the roof. Mr. John Lawes is killed, and the attorney in the cause which was trying is killed, and I am afraid some others: there were many wounded and bruised. It was the most frightful scene I ever beheld. I was just beginning to sum up the evidence, in the cause which was trying, to the jury, and intending to go immediately after I had finished. Most of the counsel were gone, and they who remained in court are very little hurt, though they seemed to be in the place of greatest danger. If I am thus miraculously preserved for any good purpose, I rejoice at the event, and both you and the little ones will have reason to join with me in returning God thanks for this signal deliverance: but if I have escaped to lose either my honour or my virtue, I shall think, and you ought

all to concur with me in thinking, that the escape is my greatest misfortune.

"I desire you will communicate this to my friends, lest the news of such a tragedy, which fame always magnifies, should affect them with fears for me.

"Two of the jurymen who were trying the cause are killed, and they are carrying dead and wounded bodies out of the ruins still."

In another letter Mr. Justice Wilmot says, "It was an image of the last day, when there shall be no distinction of persons, for my robes did not make way for me. I believe an earthquake arose in the minds of most people, and there was an apprehension of the fall of the whole hall." The modesty of the writer has induced him to suppress the fact, that his safety was owing to the presence of mind which he displayed in remaining in his place till the confusion was over.*

For many years Mr. Justice Wilmot continued to exercise the duties of a puisne judge in the king's bench, having the satisfaction of acting in conjunction with Lord Mansfield and those excellent lawyers, Mr. Justice Dennison, Mr. Justice Foster, and Mr. Justice Yates. Still his desire to occupy a less conspicuous and laborious station remained, and upon two several occasions he attempted to exchange his seat in the king's bench for that of chief justice of Chester. While he was meditating this retreat, Lord Camden, the chief justice of the court of common pleas, was raised to the woolsack, and Sir Eardley received an intimation from his brother, Sir Robert Wilmot, that it was in contemplation to confer upon him the vacant office. Having proceeded on his circuit, Sir Eardley received a letter from Lord Camden announcing the king's intention of removing him to the chief justiceship of the common pleas, if such a change should be agreeable to him. The purport of this letter was communicated by Sir Eardley to his colleague Sir Joseph Yates, with an intimation of his intention to decline the honour thus unexpectedly tendered to him.

* Cradock's Memoirs, vol. i. p. 86.

Sir Joseph, for some time, in vain endeavoured to dissuade him from his purpose, and it was only by sketching an answer to Lord Camden's letter himself that he prevailed upon his friend to revoke his determination. Sir Eardley accordingly accepted the office, and in the month of August, 1766, received his appointment.

In the evening of the day Sir Eardley kissed hands on being appointed chief justice, one of his sons, a youth of seventeen, attended him to his bedside. "Now," said he, "my son, I will tell you a secret worth knowing and remembering: the elevation I have met with in life, particularly this last instance of it, has not been owing to any superior merit or abilities, but to my humility, to my not having set up myself above others, and to an uniform endeavour to pass through life void of offence towards God and man."

Among the congratulatory letters which Sir Eardley received on this occasion, none were warmer or more sincere than the following from his friend Sir Joseph Yates: —

Clifton, August 30. 1766.

"My dear Lord Chief Justice,

"I have now the satisfaction of addressing my friend by the title I so ardently wished him, and blessed as you are with the liveliest feelings of a friendly heart (one of the greatest blessings that man can enjoy), don't you envy me the joy I feel from this event? I should indeed have been heartily chagrined if you had missed it; and, had the fault been your own, should have thought you exceedingly blamable. My casuistry would then have been staggered indeed, and would have found it a difficult point to excuse you. But now it is quite at peace and entirely satisfied. You do me great honour in rating it so high, and I am sure you speak from the heart. It is the privilege of friendship to commend, without the least suspicion of compliment, and I shall ever receive any approbation of *yours* with superior satisfaction. But no man breathing can have a surer guide or a higher sanction for his conduct than

my friend's own excellent heart. Of this the very scruple you raised would alone have convinced me if I had no other proofs. I have not the least doubt that you will find your new seat as easy as you can wish, and *all* your coadjutors perfectly satisfied. There is but one of them that could entertain any thoughts of the same place for himself; and as he knows that in the present arrangement he had not the least chance of it, I dare say he will be pleased to see it so filled. And, as to the rest of the profession, I can affirm with confidence (for you know I have but lately left the bar, where I had a general acquaintance with the sentiments of the hall), that no man's promotion would have given so universal satisfaction as yours. I repeat this to you because it certainly must give you pleasure. Success is never more pleasing than when it is gained with honour and attended with a general good will. It will rejoice me highly to shake your hand before I go northwards; and if I knew what day you would be at Bath, I would give you the meeting there. I long to hear a particular detail of every thing that has passed.

"Your most affectionate friend,

"J. YATES."

On the chief seat of the common pleas Sir Eardley conducted himself with the same candour, modesty, and good sense which always distinguished his judicial character. Though presiding in a court in which he had many of his seniors on the bench, his fine temper and natural urbanity overcame the feelings of regret or chagrin which might have arisen in their minds from his elevation. The firm and impartial hand with which he administered justice between the crown and the subject was well manifested in the memorable case of *Wilkes* v. *Lord Halifax and others*, in which, after much argument, judgment was given against the legality of general warrants, notwithstanding the long course of office in favour of such a practice. "There is no doubt," said his lordship, "but that the warrant, whereby the plain-

tiff was imprisoned and his papers seized, was illegal: it has undergone the consideration of this court, and likewise of the court of king's bench, and has very properly been deemed so by every judge who has seen it; and there is no pretence or foundation for the defendant in this cause to make any stand against this action, by way of justification, in the way he has done, because it clearly and manifestly is an illegal warrant, contrary to the common law of the land. And if warrants of this kind had been found to be legal, I am sure, as one of the plaintiff's counsel observed, it is extremely proper for the legislature of this kingdom to interpose and provide a remedy, because all the private papers of a man as well as his liberty would be in the power of a secretary of state, or any of his servants. The law makes no difference between great and petty officers. Thank God, they are all amenable to justice, and the law will reach them, if they step over the boundaries which the law has prescribed."

In the year 1770, on the resignation of Lord Camden, and the death of Mr. Yorke, the chief justice of the common pleas was considered the fittest person to supply the vacancy; and the great seal, with other honours, was tendered to him by the Duke of Grafton. The day before the resignation of Lord Camden, that nobleman came up to Sir Eardley Wilmot in the house of lords, and, pointing to the great seal, said, "There it is, Sir Eardley; you will have it in your possession to-morrow." Sir Eardley shook his head, and begged to be excused. The highest place in his profession, and the prospect of hereditary honours for his family, had few charms for a man who so deeply loved the calm pleasures of private life. Without hesitation, the chief justice declined the honours which were within his grasp, and though in the course of the same year the great seal was again pressed upon him by Lord North, he persisted in his modest but firm resolution. Indeed, at this time, his health had so far declined as to render it necessary for him occasionally to obtain the assistance of his brethren to preside at the

sittings, and, instead of accepting a more arduous office, he contemplated the resignation of his place in the common pleas. In a letter to Lord Hardwicke, dated the 29th of December, 1770, he says, "My health necessitates my retreat from public business, and all that I ask of his majesty is, that he will be graciously pleased to accept my resignation, for I have desired that it may be communicated to the king in the most humble manner from me, that I do not wish or mean to be an incumbrance to his majesty by any provision out of his civil list." And in another letter, addressed, about the same time, to his brother Sir Robert Wilmot, he expresses himself in the same manner. "I would much rather resign without any remuneration at all. The *plus* or the *minus* of sufficiency lies only in my own breast. I hate and detest pensions, and hanging upon the public like an almsman." In January, 1771, his resignation was accepted; and it was at the particular request of the king himself, which he thought it would be vanity and affectation to refuse, that he received a pension for his life.

Being thus released from the toils of office, Sir Eardley devoted much of his time to pursuits in which he had always taken delight, being a frequent visitor in the reading rooms of the British Museum. For a considerable period also he attended the argument of appeals before the privy council; a duty which he only declined when compelled to do so by his increasing infirmities. At length he retired wholly from public business, enjoying only the society of a very few friends, amongst whom were numbered Lord Shelburne, Sir Thomas Parker, Lord Huntingdon, Lord Hardwicke, and Lord Bathurst; the latter of whom, while he held the great seal, was accustomed frequently to apply to Sir Eardley Wilmot for counsel and assistance. But his principal society was that of his own family, the formation of whose characters he watched over with the most assiduous care, inculcating in the most affectionate manner the noblest lessons of virtue and honour. Many of his letters

to his children have been preserved, and abound in pure and elevated sentiments. In a letter to one of his sons, a boy of fifteen, he says, "I take the first vacant hour I have had this month, to acknowledge the receipt of your letter, and to assure you of my love and affection. I do not in the least doubt but you will merit every past and future instance of them, by seconding my endeavours to cultivate your mind, and principally to impregnate it with those principles of honour and truth which constitute a gentleman, and which I received in the utmost purity from my own father, and will transmit to you, and to your brothers and sisters, as unsullied as I received them; and however fortune may exalt or depress you in the world, the consciousness of having always acted upon those principles will give you the only perfect happiness that is to be found in this world. But, above all things, remember your duty to God, for without his blessing my love and affection for you will be as ineffectual to promote your happiness here as hereafter; and whether my heart be full of joy or of grief, it will always beat uniformly with unremitting wishes, that all my children may be more distinguished for their goodness than their greatness."

Until the year 1786, Sir Eardley Wilmot enjoyed a tolerable state of health; but from this period till the close of his life sickness rendered the continuance of it undesirable. In a letter dated in the above year he says, "I thought you would be glad to see under my own hand that I *exist*, both in body and mind, but can neither go nor stand, nor eat nor sleep; and the worst is, that I am in no danger of being relieved from this painful situation." In this state he lingered for some years, and died on the 5th of February, 1792, aged eighty-two years.

The following character is drawn by the hand of his son. If filial piety may have induced him to heighten the favourable colours, yet the outline and the lights and shadows are, doubtless, upon the whole correct.

"His person was of the middle size; his countenance

of a commanding and dignified aspect; his eye particularly lively and animated, tempered with great sweetness and benignity. His knowledge was extensive and profound, and, perhaps, nothing but his natural modesty prevented him from equalling the greatest of his predecessors. It was this invincible modesty which continually acted as a fetter upon his abilities and learning, and prevented their full exertion in the service of the public. Whenever any occasion arose that made it necessary for him to come forward (as was sometimes the case in the house of lords, in the court of chancery, and in the common pleas), it was always with reluctance; to perform a duty, not to court applause, which had no charms for his pure and enlightened mind.

"But although he was never fond of the practice of the law as a profession, he often declared his partiality for the study of it as a science: as an instance of this, after he had resigned his office, he always bought and read the latest reports, and sometimes borrowed MS. notes from young barristers.

"He was not only accomplished in the laws of his own country, but was also well versed in the civil law, which he studied when at Trinity Hall, Cambridge, and frequently affirmed that he had derived great advantage from it in the course of his profession. He considered an acquaintance with the principles of the civil law as the best introduction to the knowledge of law in general, as well as a leading feature in the laws of most nations of Europe.

"His knowledge, however, was by no means confined to his profession. He was a general scholar, but particularly conversant with those branches which had near connection with his legal pursuits, such as history and antiquities. He was one of the original fellows of the Society of Antiquaries, when first incorporated in 1750, and frequently attended their meetings, both before and after his retirement: most of his leisure hours were spent in the above researches.

"But of all the parts of Sir Eardley's character, none

was more conspicuous than the manner in which he conducted himself on the bench, in that most delicate and important office of hearing causes, either of a criminal or civil nature. He was not only practically skilled in his profession, but his penetration was quick and not to be eluded; his attention constant and unabated; his elocution clear and harmonious; but, above all, his temper, moderation, patience, and impartiality were so distinguished, that the parties, solicitors, counsel, and audience went away informed and satisfied, if not contented, — 'etiam contra quos statuit, æquos placatosque dimisit.' This was the case in questions of private property; but when any points of a public nature arose, there his superior abilities and public virtue were eminently characterised; equally free from courting ministerial favours or popular applause, he held the scale perfectly even between the crown and the people, and thus became equally a favourite with both. This was conspicuous on many occasions, but particularly in the important cause related before between Mr. Wilkes and Lord Halifax, in 1769.

"In private life he likewise excelled in all those qualities that render a man respected and beloved. His watchfulness, tenderness, and condescension as a parent, the letters in these pages will abundantly testify. May the remembrance and contemplation of his virtues inspire his descendants with a desire to imitate them! This he would have thought the most grateful reward, this the noblest monument! Such unaffected piety, such unblemished integrity, such cheerfulness of manners and sprightliness of wit, such disinterestedness of conduct and perfect freedom from party spirit, could not and did not fail of making him beloved, as well as admired, by all who knew him. Genuine and uniform humility was one of his most characteristic virtues. With superior talents from nature, improved by unremitting industry, and extensive learning, both in and out of his profession, he possessed such native humbleness of mind and simplicity of manners that no rank nor station

ever made him think highly of himself or meanly of others. In short, when we contemplate his various excellencies, we find ourselves at a loss whether most to admire, his deep and extensive learning and penetration as a lawyer; his industry, probity, firmness, wisdom, and patience as a judge; his taste and elegant accomplishments as a scholar; his urbanity and refined sentiments as a gentleman; or his piety and humility as a Christian."

The character of Sir Eardley Wilmot is touched upon by Horace Walpole with some bitterness; but it must be remembered that Sir Eardley was the friend of Lord Hardwicke. "Wilmot was much attached to Legge, and a man of great vivacity of parts. He loved hunting and wine, and not his profession. He had been an admired pleader before the house of commons, but being reprimanded on the contested election for Wareham with great haughtiness by Pitt, who told him he had brought thither the pertness of his profession, and being prohibited by the speaker from making a reply, he flung down his brief in a passion, and never would return to plead there any more." *

The judgments of Sir Eardley Wilmot are to be found in the reports of Sir James Burrow and Mr. Serjeant Wilson; and in the year 1802 a volume, containing various opinions and some of his more important judgments, was published from his own MSS. under the title of "Opinions and Judgments of Sir J. Eardley Wilmot."

SIR WILLIAM BLACKSTONE.

1723—1780.

William Blackstone, whose name has become perhaps more familiar than any other in the mouths of English lawyers, was the fourth son of Mr. Charles Blackstone, a silkman and citizen of London, by Mary the eldest

* Memoirs, vol. ii. p. 107.

daughter of Lovelace Bigg, Esquire, of Chilton Foliot, in the county of Wilts. He was born on the 10th of July, 1723, after the death of his father, and he had also the misfortune to lose his mother before he was twelve years of age. His uncle, Mr. Thomas Bigg, an eminent surgeon in London, took charge of his education, and at the age of seven years he was admitted on the foundation of the Charter House. When he attained the age of fifteen he had risen to the head of the school, and was at that early period of life admitted a commoner of Pembroke College, Oxford. His progress both at the Charter House and at Oxford was distinguished, and he was elected to an exhibition both at the school and at the college. Having selected the law as his profession, he became a member of the Middle Temple on the 20th of November, 1741.

Hitherto he had applied himself exclusively to literary and scientific pursuits; but in entering upon the severer studies of his profession, he conceived it necessary to abandon the more pleasing avocations to which he had devoted himself. The feelings which this change induced he has expressed in some lines, remarkable for the elegance both of the style and of the sentiment.

THE LAWYER'S FAREWELL TO HIS MUSE.

As, by some tyrant's stern command,
A wretch forsakes his native land,
In foreign climes condemn'd to roam,
An endless exile from his home;
Pensive he treads the destined way,
And dreads to go, nor dares to stay;
Till on some neighbouring mountain's brow
He stops, and turns his eye below;
There, melting at the well-known view,
Drops a last tear, and bids adieu:
So I, thus doom'd from thee to part,
Gay queen of fancy and of art,
Reluctant move with doubtful mind,
Oft stop, and often look behind.

"Companion of my tender age,
Serenely gay, and sweetly sage,
How blithsome were we wont to rove
By verdant hill, or shady grove,
Where fervent bees with humming voice
Around the honey'd oak rejoice,
And aged elms, with awful bend,
In long cathedral walks extend!

Lull'd by the lapse of gliding floods,
Cheer'd by the warbling of the woods,
How blest my days, my thoughts how free,
In sweet society with thee!
Then all was joyous, all was young,
And years unheeded roll'd along:
But now the pleasing dream is o'er, —
These scenes must charm me now no more:
Lost to the field, and torn from you,
Farewell! — a long, a last adieu!

"The wrangling courts, and stubborn law,
To smoke, and crowds, and cities draw;
There selfish Faction rules the day,
And Pride and Avarice throng the way;
Diseases taint the murky air,
And midnight conflagrations glare;
Loose Revelry and Riot bold,
In frighted streets their orgies hold;
Or when in silence all is drown'd,
Fell Murder walks her lonely round;
No room for peace, no room for you —
Adieu, celestial Nymph, adieu!

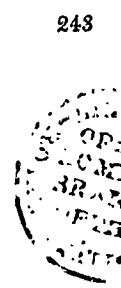
"Shakspeare no more, thy sylvan son,
Nor all the art of Addison,
Pope's heaven-strung lyre, nor Waller's ease
Nor Milton's mighty self must please:
Instead of these, a formal band
In furs and coifs around me stand,
With sounds uncouth, and accents dry,
That grate the soul of harmony.
Each pedant sage unlocks his store
Of mystic, dark, discordant lore;
And points with tottering hand the ways
That lead me to the thorny maze.

"There, in a winding, close retreat,
Is Justice doom'd to fix her seat;
There, fenced by bulwarks of the *law*,
She keeps the wondering world in awe;
And there, from vulgar sight retired,
Like eastern queens, is much admired.

"Oh! let me pierce the secret shade,
Where dwells the venerable maid!
There humbly mark, with reverent awe,
The guardian of Britannia's law;
Unfold with joy her sacred page
(The united boast of many an age,
Where mix'd though uniform appears
The wisdom of a thousand years),
In that pure spring the bottom view,
Clear, deep, and regularly true,
And other doctrines thence imbibe,
Than lurk within the sordid scribe;
Observe how parts with parts unite
In one harmonious rule of right;
See countless wheels distinctly tend,
By various laws, to one great end;
While mighty Alfred's piercing soul
Pervades and regulates the whole.

"Then welcome business, welcome strife,
Welcome the cares, the thorns of life,

The visage wan, the pore-blind sight,
The toil by day, the lamp by night,
The tedious forms, the solemn prate,
The pert dispute, the dull debate,
The drowsy bench, the babbling hall,
For thee, fair *Justice*, welcome all!



"Thus, though my noon of life be past,
Yet let my setting sun at last
Find out the still, the rural cell
Where sage Retirement loves to dwell!
There let me taste the home-felt bliss
Of innocence and inward peace;
Untainted by the guilty bribe,
Uncursed amid the harpy tribe;
No orphan's cry to wound my ear,
My honour and my conscience clear;
Thus may I calmly meet my end,
Thus to the grave in peace descend!"

The ease exhibited in these lines betrays a pen accustomed to versification; and a volume of juvenile pieces which Mr. Blackstone had collected, but which were never published, shows, that in his earlier years he devoted no inconsiderable portion of his leisure hours to poetical compositions. An early taste for literature has too often misled the student from the ruder and more rugged paths of his profession; but the taste and genius of Blackstone rendered his literary acquirements subservient to his professional success.

In November, 1743, Mr. Blackstone was elected into the society of All-Souls' College, and in the following year he was admitted actual fellow and spoke the anniversary speech in commemoration of the founder, Archbishop Chichele. From this period he divided his time between Oxford and the Temple, where he had taken chambers with the view of attending the courts. His academical and professional studies were there pursued concurrently. On the 12th of June, 1745, he commenced bachelor of civil law, and on the 28th of November, 1746, he was called to the bar.

For several years Mr. Blackstone made little progress in his profession. Without those powerful connections, upon which early success must necessarily depend, and without the advantages which volubility and confidence confer, he possessed no means of forcing himself into notice. He was therefore induced to spend a consider-

able portion of his time at Oxford, where, having been elected bursar, he employed himself in exploring and arranging the muniments of his college, and in reforming the method of keeping the accounts, a subject which he illustrated by a dissertation now preserved in the archives of the college. He also had the merit of hastening the completion of the Codrington library, which was arranged under his directions. For these services he was rewarded with the appointment of steward of the college manors. On the 26th of April, 1750, he commenced doctor of civil law.

A dispute which arose in All-Souls' College, with regard to the persons who were to be considered as next of kin to the founder, gave rise to Mr. Blackstone's first professional publication. This was the "Essay on collateral Consanguinity," which appeared in 1750, and which was afterwards printed in the collection of his law tracts. It excited considerable attention, and when, several years afterwards, the Archbishop of Canterbury as visitor formed a new regulation, he appointed Mr. Justice Blackstone his common-law assessor.

The very inconsiderable encouragement which Mr. Blackstone had received, in the practice of his profession in London, led him in the year 1753 to the resolution of retiring to his fellowship, and of practising at Oxford as a provincial counsel. At the same time he formed the design of delivering a course of private lectures on the laws of England, which was very numerously and respectably attended. Of these lectures he published an analysis in the year 1756, which will be noticed hereafter.

The zeal which he had always displayed in forwarding the interests of his college, and of the university in general, led to various honourable appointments. In the year 1757, he became one of the delegates of the Clarendon press, and applied himself successfully to the reformation of various abuses connected with that institution. He was also elected one of the visitors of Mr. Michel's foundation in Queen's College, where he was

equally happy in his efforts to terminate the disputes which had previously existed with regard to this donation.

In the year 1754 he was engaged as counsel in the county election, where a question, arising on the right of certain copyholders to vote, was the origin of his tract published a few years afterwards under the title of "Considerations on Copyholders."

In the year 1756, Mr. Viner, the laborious compiler of the most complete abridgment of the English law that has ever appeared, died, and bequeathed to the university of Oxford the whole profits of his voluminous compilation, for the purpose of promoting the study of the common law of England. This munificent benefaction was employed in the first instance in the institution of a professorship of English law, to which a stipend of two hundred pounds per annum was annexed. The duty assigned to the professor was to deliver one solemn public lecture on the laws of England in every academical term, and also by himself or his deputy to read yearly a complete course of lectures on the same subject, consisting of sixty lectures at the least. On the 20th of October, 1758, Mr. Blackstone was unanimously elected the first Vinerian professor; and on the 25th of the same month he read his introductory lecture, the method, elegance, and learning of which attracted the admiration of every one who heard it. This excellent discourse was afterward prefixed to the first volume of the Commentaries.

The reputation which the first course of the Vinerian lectures obtained was such, that the nobleman, who superintended the education of the young Prince, requested Mr. Blackstone to read them to his royal highness; an honour which was respectfully declined by the new professor in consequence of the pressure of his engagements at the university. Copies of the lectures were, however, presented to the Prince, a service for which Mr. Blackstone received a munificent acknowledgment.

The distinction which Mr. Blackstone had acquired by his lectures induced him in the year 1759 to return

to London, where he resumed his practice, visiting Oxford at stated periods only, for the delivery of his lectures. The coif was pressed upon him by Lord Chief Justice Willes and Mr. Justice Bathurst; but he thought proper to decline the honour. In the same year he gave to the world a magnificent edition of Magna Charta and the Charter of the Forest, which issued from the Clarendon press. About this time he also published a small tract on the law of descents in fee simple.

Hitherto Mr. Blackstone appears to have taken no part whatever in the political discussions of the day; but a dissolution of parliament having taken place, he was returned in 1761 as one of the representatives of Hindon, in Wiltshire. Soon afterwards he received a patent of precedence, having declined the office of chief justice of the common pleas in Ireland.

The rank thus conferred upon him, and the celebrity which he had acquired as a writer, operated very favourably on the professional views of Mr. Blackstone. His practice having considerably increased, he married Sarah, the eldest surviving daughter of James Clitherow, of Boston House, in the county of Middlesex, by whom he had a family of nine children. His fellowship having been vacated by his marriage, he was, in July, 1761, appointed principal of New Inn Hall by the Earl of Westmoreland, at that time chancellor of the university.

In the year 1762 he collected his tracts on legal subjects, and published them in two volumes 8vo.; and in the course of the following year, on the establishment of the queen's household, he received the appointment of solicitor-general to her majesty, and was elected a bencher of the Middle Temple.

In the year 1765 appeared the first volume of the celebrated *Commentaries on the Laws of England*. The history of a work which has become so universal a text-book, and which has almost rendered the abstruse science to which it is devoted a popular study, cannot be devoid of interest. The period at which Mr. Blackstone first contemplated the composition of the Commentaries does

not appear; but he was obviously led to the subject by the preparation of the private lectures which he delivered in the university of Oxford. In the earlier part of his professional life, the chair of civil law at Oxford having become vacant, the Duke of Newcastle consulted Mr. Murray the solicitor-general (afterwards Lord Mansfield) on the selection of a proper person to fill the vacancy. The solicitor-general warmly recommended Mr. Blackstone, who was accordingly introduced to the duke. Being desirous of ascertaining the principles of the candidate, his grace observed, that, in case of any political agitation in the university, he might, he presumed, rely upon Mr. Blackstone's exertions in behalf of government. "Your grace may be assured that I will discharge my duty in giving law-lectures to the best of my poor ability," was the reply. "And your duty in the other branch, too?" added his grace. Mr. Blackstone merely bowed in answer, and a few days afterwards Dr. Jenner was appointed to the vacant chair.* He did not, however, abandon the idea of lecturing on the English law at Oxford; and in the year 1753 he gave the course of private lectures, of which the Analysis of the Law of England, published three years afterwards, presents the order and principal divisions. In the arrangement of those lectures, and in the composition of his Analysis, Mr. Blackstone principally followed the system adopted by Sir Matthew Hale in his Analysis of the Law; a work to which he has, in the preface to his own volume, acknowledged his obligations. When, upon being elected the first Vinerian professor, it became necessary for Mr. Blackstone to adopt a scheme for the lectures which it would be his duty to deliver, he retained the arrangement of his former lectures, as given in the Analysis, which he regarded as an outline to be filled up and finished. To the composition of these lectures, therefore, we are indebted for the admirable "Commentaries on the Laws of England," which, notwithstanding some objections which may justly be urged against them, will remain

* Holliday's Life of Mansfield, p. 89.

a lasting monument of the genius, learning, and taste of the author.

The reception which the Commentaries met with was most flattering. Until this period the volumes usually placed in the hands of the student, at the commencement of his labours, had been Finch's Law or Wood's Institutes; works ill qualified to reconcile him to his profession. These were now gladly abandoned for a manual, in which accurate learning, systematic arrangement, and comprehensive research were accompanied by an elegance of style to which hitherto the compositions of our English jurists had been strangers. Lord Mansfield, with whom the elder writers of our law appear never to have been favourites, expressed in strong terms his admiration of the manner in which Mr. Blackstone had executed his task. Having been requested to point out the books proper for the perusal of a student, he is said to have replied, "Till of late I could never, with any satisfaction to myself, answer that question; but, since the publication of Mr. Blackstone's Commentaries, I can never be at a loss. *There* your son will find analytical reasoning diffused in a pleasing and perspicuous style. *There* he may imbibe imperceptibly the first principles on which our excellent laws are founded; and *there* he may become acquainted with an uncouth crabbed author, *Coke upon Littleton*, who has disappointed and disheartened many a tyro, but who cannot fail to please in a modern dress." * In preparing his Commentaries for the press Mr. Blackstone anxiously sought to render them as free from errors as possible. They were submitted both to Lord Mansfield and Chief Justice Wilmot †; but in what degree the work benefited by this revision we are ignorant.

However great was the admiration with which the Commentaries were received, they did not escape the severity of criticism. "Notwithstanding the diffidence," says the author, "expressed in the foregoing preface, no sooner was the work completed than many

* Holliday's Life of Mansfield, p. 89. † Life of Wilmot, p. 202.

of its positions were vehemently attacked by zealots of all (even opposite) denominations, religious as well as civil; by some with a greater, by others with a less degree of acrimony." Amongst the censors was one, whose singularly acute and inquiring mind has been devoted with extraordinary constancy, for more than half a century, to the discussion of some of the most important subjects that can affect human happiness. In the year 1776, Mr. Jeremy Bentham published his "Fragment on Government, or a Comment on the Commentaries, being an Examination of what is delivered on the Subject of Government in general, in the Introduction to Sir W. Blackstone's Commentaries, with a Preface in which is given a Critique on the Work at large." Granting, as it seems impossible not to do, the justice of many of Mr. Bentham's strictures on the Commentaries, and especially on "the antipathy to reformation," or, perhaps, more accurately speaking, the desire which pervades the work to support the system of English law, upon grounds and reasons insufficient in themselves, it must yet be remembered that Mr. Blackstone did not profess, in the language of Mr. Bentham, to be a *censor*, but merely an *expositor* of the law, and that his Commentaries cannot fairly be treated as philosophical disquisitions. Mr. Bentham has, indeed, himself pronounced a merited eulogium upon the excellent method and style of the Commentaries, in language which the commentator himself could not have surpassed.

"Let us reverse the tablet. While with this freedom I expose our author's ill deserts, let me not be backward in acknowledging and paying homage to his various merits; a justice due not to him alone, but to that public, which now for so many years has been dealing out to him (it cannot be supposed altogether without title) so large a measure of its applause.

"Correct, elegant, unembarrassed, ornamented; the *style* is such as could scarce fail to recommend a work still more vicious in point of *matter* to the multitude of readers.

"He it is, in short, who, first of all institutional writers, has taught jurisprudence to speak the language of the scholar and the gentleman; put a polish upon that rugged science; cleansed her from the dust and cobwebs of the office, and if he has not enriched her with that precision which is drawn only from the sterling treasury of the sciences, has decked her out, however, to advantage, from the toilet of classic erudition; enlivened her with metaphors and allusions; and sent her abroad in some measure to instruct, and in still greater measure to entertain, the most miscellaneous and even the most fastidious societies.

"The merit to which, as much perhaps as to any, the work stands indebted for its reputation, is the enchanting harmony of its numbers; a kind of merit that of itself is sufficient to give a certain degree of celebrity to a work devoid of every other: so much is man governed by the ear." *

On the style of the *Commentaries*, a high panegyric has been pronounced by no less a critic than Mr. Fox. In a letter addressed to Mr. Trotter, that celebrated person says, "You, of course, read Blackstone over and over again; and if so, pray tell me whether you agree with me in thinking his style of English the very best among our modern writers; always easy and intelligible, far more correct than Hume, and less studied and made up than Robertson." † Of the political tendencies of the Commentaries Mr. Fox expressed a very different opinion. In the debate on the admission of Lord Ellenborough into the cabinet, the authority of Mr. Justice Blackstone having been relied on, Mr. Fox said, "His purity of style I particularly admire. He was distinguished as much for simplicity and strength as any writer in the English language. He was perfectly free from all gallicisms and ridiculous affectations, for which so many of our modern authors and orators are so remarkable. Upon this ground, therefore, I esteem Judge Blackstone; but as a constitutional writer he is

* Preface, lxxxix. † Trotter's Memoirs of Fox, p. 512.

by no means an object of my esteem; and for this amongst other reasons, that he asserts the latter years of the reign of Charles the Second (I mean those which followed the enactment of the *habeas corpus* act) to have been the most constitutional period to be found in our history, not excepting any period that followed. Now it would be inconsistent with all the principles which I have ever held, to regard such a writer as a constitutional authority, much less to look up to him as an oracle." *

In the year 1766, Mr. Blackstone resigned the Vinerian professorship, and the place of principal of New Inn Hall, in consequence of his London business interfering with his duties at the university.

Having been returned for Westbury in Wiltshire, in the parliament of 1768, he took a part in the debates which arose relative to the election of Mr. Wilkes. Some of the positions advanced by him on this occasion were stated by his adversaries in the house to be at variance with the doctrines laid down in the Commentaries, and he was also attacked in a pamphlet supposed to have been written by Sir William Meredith. To this pamphlet Mr. Blackstone published a reply, which was severely commented upon by Junius†, who thus concludes his bitter criticism: — "If I were personally your enemy, I should dwell with a malignant pleasure upon those great and useful qualities you certainly possess, and by which you once acquired, though they could not preserve to you, the respect and esteem of your country. I should enumerate the honours you have lost, and the virtues you have disgraced; but, having no private resentments to gratify, I think it sufficient to have given my opinion of your public conduct, leaving the punishment it deserves to your closet and to yourself."

Those professional honours to which the talents and acquirements of Mr. Blackstone gave him so just a claim were now opened to him; and on the resignation of

* Cobbett's Parl. Deb. vol. vi. p. 314. † Letter xviii.

Mr. Dunning in 1770, the vacant place of solicitor-general was offered to him. The parliamentary duties incident to this office were probably the ground on which it was declined by Mr. Blackstone. Of a sensitive and retiring disposition, he had been disgusted with the contests into which his parliamentary duties had led him, and he looked anxiously for the shelter from political life which the bench afforded. Very shortly after his refusal of the post of solicitor-general, Mr. Justice Clive, one of the judges of the common pleas, resigned his seat, which was immediately tendered to Mr. Blackstone. The patent for his appointment was about to pass, when Mr. Justice Yates expressed an earnest wish to change his court, in consequence of which Mr. Blackstone was, in Hilary term, 1770, appointed to the seat vacated by Sir Joseph Yates in the king's bench. In the ensuing Trinity term, however, on the death of Mr. Justice Yates, he accepted the place originally designed for him in the court of common pleas.

In the latter part of his life Sir William Blackstone devoted much of his time, in conjunction with Mr. Howard and Mr. Eden, to the subject of prison discipline — a subject with which, not merely the welfare of the individuals who are the objects of that discipline, but the virtue and happiness of society at large, are intimately connected. In common with many reflecting men of his day, Sir William Blackstone had remarked the inefficacy of the system which restores prisoners to society, on the expiration of their punishment, more complete adepts in their criminal arts than when they entered the walls of their gaol, and resolutely bent to revenge upon the community the cruelty and harshness they have sustained at its hands. If a scheme had been formed for the propagation of vice, for initiating the uninstructed in its mysteries, and for carrying to their full perfection the talents of the more experienced criminals, no schools could have been instituted better adapted to such ends than our own prisons towards the middle of the last century. "Idleness, drunkenness, de-

bauchery of all kinds, filthiness beyond credibility, an unrestrained communication between the oldest and the youngest offenders, were the distinguishing qualities of almost every county gaol in England. By the exertions of Howard (a name never to be pronounced without feelings of the deepest reverence and the most grateful admiration), the public were roused to a sense of this most disgraceful and injurious system. Amongst others, Sir William Blackstone exerted himself, in conjunction with Mr. Howard, to procure an act of parliament for the establishment of penitentiary houses near the metropolis, the objects of which should be "to seclude the criminals from their former associates, to separate those of whom hopes might be entertained from those who were desperate, to teach them useful trades, to accustom them to habits of industry, to give them religious instruction, and to provide them with a recommendation to the world, and the means of obtaining an honest livelihood, after the expiration of the term of their imprisonment." The statute* accordingly passed, and though, in consequence of the principles upon which it was founded having been very partially acted on, it did not produce all the beneficial effects which it was so well calculated to accomplish, it yet led the way to more just and rational views of prison discipline. In one of his charges to the grand jury Sir William Blackstone referred to the establishment of penitentiaries under this act in the following terms, which convey in an admirable manner the principles and results of the system: — "In these houses the convicts are to be separately confined during the intervals of their labours, debarred from all incentives to debauchery, instructed in religion and morality, and forced to work for the benefit of the public. Imagination cannot figure to itself a species of punishment in which terror, benevolence, and reformation are more happily blended together. What can be more dreadful to the riotous, the libertine, the voluptuous, the idle delinquent, than solitude, confinement, sobriety, and

* 19 G. 3. c. 74.

constant labour? Yet what can be more truly beneficial? Solitude will awaken reflection, confinement will banish temptation, sobriety will restore vigour, and labour will beget a habit of honest industry; while the aid of religious instruction will implant new principles in his heart, and, when the date of his punishment is expired, will conduce to both his temporal and eternal welfare. Such a prospect as this is surely well worth the trouble of an experiment." It is gratifying to know that the experiment, when fairly tried, has most fully succeeded, and that in America, where the penitentiary system has been put in practice on its true principles, it has produced results as successful as its benevolent founders could desire. In England its progress has been retarded by misconceptions of its views and ends, and latterly by the introduction of the tread-mill, a costly and pernicious invention, altogether at variance with the system of useful labour recommended by Blackstone, and infinitely inferior both in ingenuity and cheapness to the scheme adopted at some of the prisons, in the time of Howard, of bringing into the gaol "loads of gravel or dirt, to be removed in baskets from one side to another," or to the ingenious contrivance of the gaoler who said, "I endeavour to plague and tease my prisoners by making them saw wood with a blunt saw." *

Sir William Blackstone did not for any long time enjoy the honours to which his learning, his literature, and his diligence had raised him. In his earlier life he had devoted himself but too assiduously to the studies on which his advancement necessarily depended, and his health, which appears never to have been robust, suffered from this injudicious application. He had, unfortunately, also contracted an aversion to exercise, the neglect of which contributed to increase a nervous complaint to which he was occasionally subject, and which produced a distressing giddiness or vertigo. About Christmas, 1779, he was attacked with a shortness of breath, which was thought by his physicians to arise from water on

* Account of the Prisons, &c. of the Home Circuit, p. 17.

the chest, and the usual remedies were applied, from which he appeared to receive benefit. In Hilary term he came up to town, for the purpose of attending his duties in court, but again became alarmingly ill, with symptoms of drowsiness and stupor. The disorder rapidly increased, and, after lying insensible for some days, he died on the 14th of February, 1780, in the 57th year of his age. He was buried at the parish church of St. Peter, in Wallingford.

The fame of Sir William Blackstone as a commentator on the laws of England has rendered his character as a judge less conspicuous. His judgments, indeed, are never wanting in learning and good sense; but they would not alone have raised his name to the distinguished station which it now occupies. The notes of his judgments, published with his other reports after his death, are not remarkable for their research or accuracy; and it is probable that his legal acquirements rather declined than advanced after the publication of his Commentaries.

In his political sentiments he was moderate, being esteemed what is usually termed "a firm supporter of the true principles of our happy constitution in church and state." In his views of politics, as well as in those of law, he was inclined rather to extenuate and to justify than to doubt and criticise. A remarkable instance of the caution with which he has avoided offending established opinions or prejudices may be found in that portion of the Commentaries in which he speaks of the Revolution of 1688. Without venturing to deduce the great and obvious principle which is involved in it, he treats it only as a precedent applicable to a state of things in all circumstances similar; thus divesting one of the noblest moral lessons, which governments were ever taught, of all its salutary warnings. Still, when we remember that Sir William Blackstone had been educated amongst persons professing, for the most part, the principles of high Toryism, that his lectures were addressed to an audience chiefly composed of persons of similar opinions, and when we also take into account the peculiar circum-

stances of his professional and private life, it would be unjust to accuse him of want of liberality.

"He was a believer," says his biographer, Mr. Clitherow, "in the great truths of Christianity, from a thorough investigation of its evidence: attached to the church of England from conviction of its excellence, his principles were those of its genuine members, enlarged and tolerant. His religion was pure and unaffected, and his attendance on its public duties regular, and those duties always performed with seriousness and devotion."

The acquirements of Sir William Blackstone as a scholar were, doubtless, very considerable. He had always been in the habit of employing much of his time in reading; and, possessing a powerful memory, with a mind very capable of arranging its stores, he was remarkable for the variety and extent of his information. It is to be regretted that he never applied himself to any undertaking of a purely literary nature, in which there can be little doubt that he would have been eminently successful. Almost the only composition of this kind from the pen of Sir W. Blackstone which has been preserved, is an investigation of the quarrel between Pope and Addison, communicated by its author to Dr. Kippis, the editor of the Biographia Britannica, and by him published in the life of Addison as the production of "a gentleman of considerable rank, to whom the public is obliged for works of much higher importance." In noticing this disquisition, Mr. D'Israeli has remarked the "masterly force and luminous arrangement of investigation" it displays, "and to which," as he observes, "since the days of Bayle, literary history has been too great a stranger."*

The private character of Sir William Blackstone is represented in very favourable colours by his biographer, but seems to have been misunderstood by those who did not enjoy an intimate acquaintance with him. His appearance was not prepossessing. The heaviness of

* Quarrels of Authors, vol. i. p. 243.

his features and figure, and the contraction of his brow, gave a character of moroseness to his countenance which did not exist in fact. He was not, however, free from occasional irritation of temper, which was increased by the nervous complaints to which he was subject. In his own family he was cheerful, agreeable, and even facetious, and a diligent observer of those economical arrangements upon which so much of the respectability and comfort of life depends. The disposal of his time was so skilfully managed, that, though he was a laborious student, he freely mingled in the amusements and relaxations of society. This he effected by his rigid punctuality. "During the years in which he read his lectures at Oxford," says his biographer, "it could not be remembered that he had ever kept his audience waiting for him even for a few minutes. As he valued his own time, he was extremely careful not to be instrumental in squandering or trifling away that of others, who, he hoped, might have as much regard for theirs as he had for his. Indeed, punctuality was in his opinion so much a virtue, that he could not bring himself to think perfectly well of any who were notoriously defective in it." The diffidence and reserve which characterised his manners were sometimes misconstrued into pride, and the dignity which he preserved on the bench into austerity.

The notes of decisions which he had collected, both at the bar and while on the bench, were published after his death, pursuant to the directions of his will.

LORD THURLOW.

1736—1806.

EDWARD THURLOW was the son of a clergyman possessing an inconsiderable living at Ashfield, in Suffolk. It has been supposed that he derived his descent from Thurloe, the secretary of Cromwell; but he is reported himself to have given a different account of his origin. When questioned on the subject, his reply was, "There were two Thurlows in my country — Thurlow the secretary, and Thurlow the carrier. I am descended from the latter." *

After receiving the rudiments of his education at school, he was admitted of Peter House, Cambridge; and in his childhood and youth he is said to have exhibited those peculiarities of character which distinguished him in after-life. Haughty, churlish, and overbearing, he endeavoured to secure by assumption that place in the estimation of others which ought only to be granted to merit. His love of pleasure frequently led him into situations of discredit and difficulty; and he was often compelled to atone for the indolence of the day by devoting to study the hours due to repose. Notwithstanding these irregular habits, he gained no inconsiderable reputation for classical acquirements. †

Having become a member of the Inner Temple, he seems to have prosecuted his studies there with more diligence than at the university. "It was generally supposed," says a person who was acquainted with him at this period of his life ‡, "that Thurlow in early life was idle; but I always found him close at study in a morning, when I have called at the Temple; and he frequently went no farther in an evening than to Nando's, and then only in his *déshabillé*." Having been called to the bar in the year 1758, he remained for some time

* Public Characters.
† Strictures on the Lives of Eminent Lawyers, p. 5.
‡ Cradock's Memoirs, Vol. i. p. 79.

without practice; and as his father did not possess the means of affording him adequate assistance, he was subjected to much of the vexation and discredit which wait upon pecuniary difficulties. It is said that he has been known to commence his circuit without the means of discharging the necessary expenses of the first stage; and an anecdote is related of the ingenious manner in which he contrived to reach the assize town, by taking a horse upon trial. * At length he had the good fortune to be employed in the case of *Robinson* v. *Lord Winchelsea*, and the manner in which he acquitted himself upon that occasion at once brought him into notice. He was soon afterwards retained as counsel in the celebrated *Douglas* cause, and from this period his success may be dated. Upon this occasion he became involved in a quarrel with Mr. Andrew Stewart, a gentleman who was deeply interested in the cause. They met at Kensington Gardens; and Mr. Stewart afterwards observed, "that Mr. Thurlow advanced and stood up to him like an elephant."

His first promotion, to the dignity of a silk gown, is said to have been owing to the exertions and importunities of the celebrated Duchess of Queensberry, who solicited this honour for him from Lord Bute. † In the year 1770, on the resignation of Mr. Dunning, he was appointed solicitor-general; and in the following year, having succeeded Sir William de Grey as attorney-general, he was returned to parliament as member for the borough of Tamworth.

One of the first occasions on which Thurlow distinguished himself in the house of commons, after his appointment as solicitor-general, was in the debate which took place on the 27th of November, 1770, on the power of the attorney-general to file informations *ex officio*. In the course of the debate, the prevailing doctrine of the king's bench, as to the functions of the jury, was called in question, and was strenuously defended by the solicitor-

* Strictures on the Lives of Eminent Lawyers, p. 7.
† Wraxall's Memoirs, vol. i. p. 626.

general. His speech exhibited much of that rude and turbulent style of oratory from which all his harangues derived their chief effect. A few passages from it will give an idea of his parliamentary eloquence.

"For my own part, sir, I cannot help considering the project as a crazy conceit, solely intended for gaining a little popularity; for men, however hopeless, will 'spread the thin oar and catch the driving gale,' the popular breeze, whose murmur is so flattering and delightful to certain ears. But the wisdom and gravity of this house are not to be misled by such feeble engines; it must perceive, that the power at present lodged in the attorney-general is necessary, as well for speedily punishing as for preventing daring libels. If no other process is left but the common one, of bringing the affair before a grand jury, the delinquent may in the mean time mock and escape justice. This is sometimes the case, now that the power of filing informations is in its full vigour. How much more will it be so when no such power exists? No offender can be brought to justice. What is the consequence? The licentiousness of the press will increase; crimes will multiply; instead of one whisperer, we shall have a hundred; nothing will be published but libels and lampoons; the press will teem with scurrility, abuse, and falsehood; the minds of the people will be poisoned with vile aspersions, and misled by scandalous misrepresentations; the many-headed beast will swallow the poison, and the land will consequently be one scene of anarchy and confusion.

"Sir, the other charge is equally groundless and absurd. The construction of libels belongs by law and precedent to the judge, not to the jury; because it is a point of law, of which they are not qualified to judge. If any other rule prevailed, if the matter was left to the jury, there would be nothing fixed and permanent in the law. It would not only vary in different counties and cities, according to their different interests and passions, but also in the minds of the same individuals, as they should happen at different times to be agitated by different

humours and caprices. God forbid that the laws of England should ever be reduced to this uncertainty! All our dictionaries of decisions, all our reports, and Coke upon Littleton itself, would then be useless. Our young students, instead of coming to learn the law in the Temple and in Westminster-hall, would be obliged to seek it in the wisdom of petty juries, country assizes, and untutored mechanics. Adieu to precision, adieu to consistency, adieu to decorum! All would be confusion, contradiction, and absurdity: the law would, like Joseph's garment, become nothing but a ridiculous patchwork of many shreds and many colours,—a mere sick man's dream, without coherence, without order,—a wild chaos of jarring and heterogeneous principles, which would deviate farther and farther from harmony. Yet the prevention of this state is the crime with which our judges are charged. *O tempora, O mores!* To what are we come at last!"

On Mr. Serjeant Glynn's motion for a committee to enquire into the administration of criminal justice*, when the character of Lord Mansfield and the proceedings of the king's bench in matters of libel were severely arraigned, the solicitor-general spoke with much vehemence against the motion. "If," said he, "we allow every pitiful patriot thus to insult us with ridiculous accusations, without making him pay forfeit for his temerity, we shall be eternally pestered with the humming and buzzing of these stingless wasps. Though they cannot wound or poison, they can tease and vex. * * * * I hope we shall now handle them so roughly, as to make this the last of such audacious attempts." In defending the current doctrine as to libels, the solicitor-general did not hesitate to lay down one of the most extraordinary positions ever heard from the mouth of an English lawyer, and which, if established, would lay the liberties of the country prostrate at the feet of the government. "If," said he, "we even suppose the jury sufficiently enlightened to unravel those knotty points, yet there remains an insuperable objection. In state

* Parl. Hist. vol. xvi. p. 1291.

libels their passions are frequently so much engaged, that they may justly be considered as parties concerned against the crown." As if twelve men, chosen indifferently from amongst the people, were less likely to administer impartial justice than one man or than four men appointed by the crown!

In the violent debates which took place in 1771, on the motion to commit the Lord Mayor and Alderman Oliver to the Tower, for the part they had taken in screening the printers of debates from the vengeance of the house, Thurlow, then attorney-general, made a long and vehement speech. * "Have not the members of this house," he exclaimed, "as conscientious a veneration for oaths as the mayor? Or are they afraid to punish his licentiousness, when he is not afraid to insult their authority? All that's man, all that's Briton is firing in my bosom while I ask these simple questions! Well may our enemies say, that we have sacrificed the dearest ties that bound us to our constitution, if we now suffer the whole body of the English commons to be trod upon by the instrument of a despicable faction. Have we so long defended our privileges against the tyranny of kings, to fall at last before the turbulence of a seditious city magistrate?" The name of the attorney-general again appears as a speaker in the debate on General Burgoyne's motion, relating to the conduct of Lord Clive in India †: in the proceedings against Horne for a libel on the speaker ‡; and in the debate on the bill for regulating the government of Massachusetts Bay. § In the latter speech he supported in the broadest terms the right of the mother country to tax the colonists, asserting that, "a man must abuse his own understanding very much not to allow of that right." In all the subsequent debates on this subject he maintained the same doctrine, and invariably urged the necessity of employing vigorous measures, stigmatising the Americans in the most violent terms. "Treason and rebellion," he exclaimed, in the debate on the bill for suspending the habeas corpus

* Parl. Hist. vol. xvii. p. 136. † Id. p. 868. ‡ Id. p. 1034. § Id. p. 1313.

act *, "are properly and peculiarly the native growth of America."

In the debate which took place in the month of February 1777, upon Mr. Fox's motion for the production of papers, &c. respecting the progress of the American war, the attorney-general was placed in a singular position. The circumstances are thus related by the compilers of the Parliamentary History†:—"The attorney-general replied to Mr. Dunning, and was contending against the ill policy of giving such information at the present critical moment, when news came from the lords that the ministers in the upper house had agreed to the same motion. This intelligence produced a great deal of laughter amongst the minority, and the whisper, reaching the attorney-general, threw him into a little confusion; but, having recovered from it, he quitted the defence of administration, and said, that, Let ministers do as they please in this or in any other house, he, as a member of parliament, never would give his vote for making public the circumstances of a negotiation during its progress. However, this did not stifle the laugh, which continued for some time." One of the latest occasions upon which the attorney-general spoke in the commons, was in the debate on Sir George Saville's bill for the relief of the Roman Catholics ‡, when he declared that he had no intention of opposing the bill.

The gratitude of Lord North, for the assistance rendered to him by Thurlow during the American contest, was at length manifested by the promotion of the latter to the woolsack. He succeeded Lord Bathurst, on the 2d of June, 1778, and was immediately raised to the peerage, by the title of Baron Thurlow, of Ashfield.

Upon this occasion, Cowper, the poet, who in former years had been his fellow-student in the Temple, addressed to him the following verses:—

"Round Thurlow's head in early youth,
And in his sportive days,
Fair Science pour'd the light of truth,
And Genius shed his rays.

* Parl. Hist. vol. xix. p. 9. † Id. p. 517. ‡ Id. p. 1140.

"' See!' with united wonder, cried
Th' experienced and the sage,
' Ambition in a boy supplied
With all the skill of age!

"Discernment, eloquence, and grace
Proclaim him born to sway
The balance in the highest place,
And bear the palm away.'

"The praise bestow'd was just and wise;
He sprang impetuous forth,
Secure of conquest, where the prize
Attends superior worth.

"So the best courser on the plain,
Ere yet he starts, is known,
And does but at the goal obtain
What all had deem'd his own."

In the house of lords, the chancellor manifested the same opposition to all conciliation with America which had distinguished his career in the commons. He also took an active part in the debates on Admiral Keppel's court-martial bill, and in those relating to the Earl of Sandwich's conduct with respect to Greenwich hospital. When Dr. Barrington, then Bishop of Landaff, brought in a bill, in 1779, "for the more effectual discouragement of the crime of adultery *," Lord Thurlow gave the measure his strenuous support, speaking, it is said, "with peculiar feeling, strength, and argument." To the astonishment, it may be presumed, of their lordships, he declared that, "for his part, he *saw the importance of the bill to the peerage so clearly*, that if he had the blood of forty generations of nobility flowing in his veins, he could not be more anxious to procure it that assent and concurrence which it deserved from their lordships."

Upon the sudden and singular resignation of Lord North, in the year 1782, after a contest for power which seemed to exhibit a tenacity of office not to be overcome by any ordinary opposition, and on the accession of the Marquis of Rockingham to the post of first minister, it was natural to suppose that the seal would fall from the grasp of Lord Thurlow. Personally obnoxious as he was to some members of the new administration, and

* Parl. Hist. vol. xx. p. 592.

politically opposed to all of them, there appeared to be little probability of his being allowed to retain his seat in the cabinet. But the personal regard in which he was held by the king surmounted these obstacles. In the preliminary negotiations between the sovereign and Lord Rockingham, his majesty is said to have stipulated for the continuance of the chancellor in his office; a condition which was not granted without much hesitation and difficulty. In the ministerial explanations which followed the death of the Marquis of Rockingham, Mr. Fox declared, that he had felt strong objections to holding office with Lord Thurlow, and that the only thing that had induced him to associate with Lord Shelburne and the chancellor in office, had been the appointment of Lord Rockingham to the head of the administration.* That the stern and unbending mind of Lord Thurlow should accommodate itself to the views and measures of his new coadjutors was scarcely possible; yet that he should suffer the projects which he could not approve to pass in unassenting silence, might perhaps have been expected from him. But the chancellor had been little accustomed to restrain the expression of his opinions, especially when those opinions were harsh and condemnatory; and he did not now hesitate to oppose, with the full force of his singular character, the measures introduced by his colleagues, where he found them opposed to his own peculiar views. Soon after the formation of the Rockingham ministry, two bills were brought into the house; the one for the prevention of contractors sitting in parliament, the other to exclude officers of the customs and excise from voting at elections. So direct a blow at the influence of the crown immediately roused the jealous indignation of Thurlow, who, supported by Lord Mansfield, opposed vehemently, though vainly, the passing of the bills through the peers. So great was the interest taken by the other ministers in the fate of these bills, that Fox and Burke usually took their station on the steps of the throne while the debates were proceed-

* Parl. Hist. vol. xxiii. p. 123.

ing in the lords; but not the whole ministerial array would have deterred the chancellor from the expression of his indignation. On many of the clauses in these bills he divided in the minority.*

The obstinate part acted by Lord Thurlow during the Rockingham administration was not forgotten on the formation of the celebrated coalition ministry in 1783. When the king reluctantly consented to place the government in the hands of the Duke of Portland, or rather of Mr. Fox and Lord North, he again attempted to retain the chancellor, whose professed devotion and attachment to his person he highly regarded. At an audience which took place at St. James's with the heads of the new ministry, his majesty is said to have conceded every point in dispute, except that the chancellor should not be deprived of the great seal. If that nobleman, he said, were permitted to remain in office, he would allow the new ministers to dispose of all other employments at their pleasure. But no considerations could induce the ministers elect to consent to an alliance so dangerous to their very existence. They insisted that Thurlow should be displaced, and the great seal put into commission; and, on the king's refusal, the negotiation was for some time broken off.† A species of interregnum ensued, during which the king was, without doubt, very principally guided by the advice of the chancellor, who was denounced by Mr. Fox, in the house of commons, as the guilty adviser, to whose counsels the distracted state of the government was owing. Unable to resist the forces of the coalition, the king was at length compelled to give way, and on the formation of the new ministry, the great seal was put into commission, at the head of which was placed Lord Loughborough.

Though driven from office, Thurlow still remained the friend, and probably the secret counsellor, of the sovereign. When the celebrated India bill, which ultimately proved the destruction of the administration

* Wraxall's Memoirs, vol. ii. p. 176. † Id. p. 315.

which projected it, was submitted to the king, previously to its introduction into parliament, his majesty is said to have laid it confidentially before Lord Thurlow, with a request that he would state his legal opinion with respect to its nature. According to the rumour of the day, the opinion delivered by Lord Thurlow was, that the bill was calculated to render ministers independent of the crown, and that it contained many clauses injurious to the constitution; but at the same time his lordship's advice was said to have been, that his majesty should wait for the more complete development of the measure before he manifested his disapprobation.* In the debates which afterwards took place on the bill in the house of lords, Lord Thurlow played a very conspicuous part, declaring that, if the measure passed, the king would, in fact, take the diadem from his own head, and place it on that of Mr. Fox. It is not improbable that Thurlow, on this occasion, acted as the instrument of the crown, in conveying to those lords who had promised to promote the measure, and who subsequently withdrew their support, the intimation of the king's private wishes.

When, on the defeat of ministers in the house of lords, and their dismissal by the king, Mr. Pitt assumed the reins of government, the great seal was of course replaced in the hands of Lord Thurlow, who filled that place in the upper house which the first minister sustained in the commons.

The attachment and loyalty of the chancellor to the person of his sovereign were put to the test in a very striking manner during the debates respecting the regency, which occurred on the king's illness in 1789. The vigour and animation with which Lord Thurlow supported the propositions of Mr. Pitt, and especially the resolution for intrusting to the queen the custody of his majesty's person, and the control and management of the household, attracted the attention and applause of the country. His speech on this occasion may be re-

* Wraxall's Memoirs, vol. ii. p. 412.

garded as an adequate specimen of his forcible and effective style of speaking. "He completely concurred with the other side of the house, that the man who endeavoured to sow dissensions in the royal family, and to set the different branches at variance, deserved the execrations of his country, and acted with a degree of baseness beyond any other species of human depravity. He declared that it was far beyond his power to conjecture in what manner it was conceived to be possible to place the king in the hands of his royal consort, without giving her the superintendence and control of the household. If they rejected a part of the resolution, they might as well proceed to treat the king as an ordinary individual, and put him upon board wages, or send him to one of those boarding-houses that take in unfortunate invalids. Let the house remember that the queen was to have the care of her royal patient, not as a wretched being destitute of friends, an obscure individual, without name, without honour, and without reputation, forsaken by all the world; but as a king whom his people looked up to with loyalty and affection, whom they anxiously wished to see enabled to reascend his throne, and again distributing blessings to a grateful nation. As far as his voice could go, he should utter it with energy and sincerity, to claim for the king all the dignity that ought to attend upon the royal person in the hour of his indisposition; and who would dare to refuse his demand? No man alive to the least sense of loyalty, alive to a principle of compassion, alive to any one generous feeling, could lend his hand to so cruel a dilapidation. He protested to God, that he did not believe there was a noble lord in the house who wished to strip his majesty of every mark of royalty, and reduce the king to an abject and forlorn situation, while he was labouring under a misfortune equal to any misfortune that had ever happened since misfortune was known in the world. The intention of separating the second from the first part of the proposition was cruel in the extreme. It must operate like a total extinction

of pity for that royal sufferer, whose calamity entitled him to the most unlimited compassion, and even increased respect.

'Deserted in his utmost need
By those his former bounty fed.'

"The obvious feelings of mankind went so directly to the wish of paying every mark of reverence, respect, and attention to the sovereign in the hour of his misery, that he was persuaded the public would be shocked at the idea of the committee persisting for a moment to hesitate whether the king should be attended by the royal council or not." *

The climax of the chancellor's loyalty was exhibited in his celebrated declaration, that "his debt of gratitude to his majesty was ample, for the many favours he had graciously conferred upon him, which when he forgot, might God forget him!"

The generous devotion to the person and fortunes of his afflicted sovereign which Lord Thurlow thus manifested rendered him at the time highly popular in the country. Men beheld him, in the immediate prospect of a removal from his high office, regardless of his own interest, passionately advocating those of the kind master and condescending friend who had so frequently, in his happier moments, extended to him every mark of his royal confidence and attachment. They imagined that they witnessed the singular spectacle of a disinterested friendship subsisting between the sovereign and his minister; a friendship which, though obscured in the alienated mind of the afflicted monarch, still survived in the gratitude of the faithful servant. What a quick revulsion would these sentiments have experienced, had the world been acquainted with that scene of duplicity which has since been brought to light! It appears from subsequent disclosures, that, at the commencement of the king's afflicting illness, overtures were made by Sheridan, who acted throughout as the confidential adviser of the Prince, to the chancellor, for the purpose of securing his

* Annual Register for 1789, p. 125., and Parl. Hist. vol. xxvii. p. 1082.

accession to the party of the prince's friends. The negotiation had proceeded so far, that Fox, on his arrival from the Continent, found it necessary to proceed in it, although the chancellor was highly obnoxious to him, and although there subsisted between him and Lord Loughborough a sort of tacit engagement with regard to the disposition of the great seal.

The sentiments of Mr. Fox on this occasion, and his distrust of the successful issue of the negotiation, were expressed in the following letter to Sheridan: —

"Dear Sheridan,

"I have swallowed the pill—a most bitter one it was—and have written to Lord Loughborough, whose answer, of course, must be consent. What is to be done next? Should the prince himself, you or I, or Warren, be the person to speak to the chancellor? The objection to the last is, that he must probably wait for an opportunity, and that no time is to be lost. Pray tell me what is to be done. I am convinced, after all, that the negotiation will not succeed, and am not sure that I am sorry for it. I do not remember ever feeling so uneasy about any political thing I ever did in my life." *

The distrust of the chancellor's designs, felt by the prince's friends, was confirmed by the following letter from his rival Lord Loughborough: —

"My dear S.,

"I was afraid to pursue the conversation on the circumstance of the inspection committed to the chancellor, lest the reflections that arise upon it might have made too strong an impression on some of our neighbours last night. It does indeed appear to me full of mischief, and of that sort most likely to affect the apprehensions of our best friends (Lord John, for instance), and to increase their reluctance to take any active part.

"The chancellor's object evidently is to make his way

* Moore's Life of Sheridan, vol. ii. p. 31.

by himself, and he has managed hitherto as one very well practised in that game. His conversations both with you and Mr. Fox were encouraging, but at the same time checked all explanations on his part, under a pretence of delicacy towards his colleagues. When he let them go to Salthill, and contrived to dine at Windsor, he certainly took a step that most men would have felt not very delicate in its appearance, and, unless there was some private understanding between him and them, not altogether fair, especially if you add to it the sort of conversation he held with regard to them. I cannot help thinking, that the difficulties of managing the patient have been excited or improved, to lead to the proposal of his inspection (without the prince being conscious of it); for by that situation he gains an easy and frequent access to him, and an opportunity of possessing the confidence of the queen. I believe this the more from the account of the tenderness he showed at his first interview, for I am sure it is not his character to feel any. With a little instruction from Lord Hawkesbury, the sort of management that was carried on by means of the princess dowager, in the early part of the reign, may easily be practised. In short, I think he will try to find the key of the backstairs, and, with that in his pocket, take any situation that preserves his access, and enables him to hold a line between different parties. In the present moment, however, he has taken a position that puts the command of the house of lords in his hands.

"I wish Mr. Fox and you would give these considerations what weight you think they deserve, and try if any means can be taken to remedy this mischief, if it appears in the same light to you." *

It is said, that upon one occasion, in the course of these manœuvres, the chancellor, to the amusement of his colleagues, inadvertently betrayed the secret of an interview which he had just had with the prince, by carrying to the council his royal highness's hat instead

* Moore's Life of Sheridan, vol. ii. p. 32.

of his own. The further history of the negotiation, and the motives which induced Lord Thurlow to adhere to Mr. Pitt, and to present himself as the most strenuous opponent of those with whom he had so lately been in treaty, have never been explained; but it is probable that the reluctance with which Mr. Fox viewed the projected alliance, and his personal distaste to the chancellor, were the principal reasons of the negotiation being broken off. It is very possible also that Thurlow, entertaining, as the business proceeded, more lively expectations of the king's recovery, became more doubtful as to the policy of risking his fortunes in conjunction with those of the men whose hopes entirely depended on the continuance of the royal indisposition. The negotiation was carried on till within a few days of that explosion of loyalty by which his lordship astonished and delighted the nation.

The feelings of the Whigs towards the chancellor on this occasion were, as may well be conceived, of no friendly character. The whole artillery of their eloquence was directed against the woolsack. The light shafts of Sheridan's wit, and the more terrible bolts of Burke's oratory, were levelled against the impregnable chancellor. He, confident in his usurped dominion of the house of lords, and secure, in the honour of the Whigs, from all disclosure of his late tergiversation, repelled the assaults of his adversaries with haughty defiance. In adverting to the precedents which had been adduced of the chancellor having directed the use of the great seal during the incapacity of the king, Burke said, "But what is to be done when the crown is in a *deliquium?* It was intended, he had heard, to set up a man with black brows and a large wig, a kind of scarecrow to the two houses, who was to give a fictitious assent in the royal name, and this to be binding on the people at large." * In another speech, he alluded to the celebrated passage, in the delivery of which the chancellor had exhibited such strong signs of emotion. "The other

* Burke's Speeches, vol. iii. p. 361.

house were not yet, perhaps, recovered from that extraordinary burst of the pathetic which had been exhibited the other evening; they had not yet dried their eyes, or been restored to their former placidity, and were unqualified to attend to new business. The tears shed in that house, on the occasion to which he alluded, were not the tears of patriots for dying laws, but of lords for their expiring places. The iron tears which flowed down Pluto's cheek rather resembled the dismal bubbling of the Styx than the gentle-murmuring streams of Aganippe." *

It is not improbable that some suspicion of the double part thus acted by the chancellor lodged in the mind of Mr. Pitt, and that from this period he ceased to regard him with that confidence which he looked upon as essential to the success of his councils. Nor was the character of Thurlow such as to attract the esteem and attachment of the first minister: his obstinate unyielding temper, his rugged manners, and his haughty reliance on his own personal favour with the sovereign, ill suited the peculiar temper of Mr. Pitt, who was accustomed to select his favourite adherents rather for their devotion to his own person, than for the possession of talents and qualities which might render them independent of his power. Of the precise causes which led to the misunderstanding between the chancellor and Mr. Pitt little is known; but it is not improbable that its foundation was laid at the period of the regency question, and that it continued to gather strength and importance from a thousand minute circumstances which must have occurred in the course of their official intercourse.

One of the latest efforts of Lord Thurlow, while chancellor, in the house of lords, was his opposition to Mr. Fox's libel bill. In his usual bold and unqualifying manner, he declared that he did not know a principle more opposite to every thing he had learned from the first moment of his coming into the profession, than that the judge ought to declare the law to the jury, and that the

* Burke's Speeches, vol. iii. p. 382.

jury should decide both on the question of law and of fact. In his zeal for the profession of which he was the head, he undertook the chivalrous task of defending the characters of the Stuart judges. Speaking of the legal decisions prior to the Revolution, he said, that even in those times, when judges were not independent, *the stream of justice ran with remarkable clearness.* It is difficult to determine whether this startling assertion is to be attributed to the chancellor's profound ignorance, or to a gross and wilful desire to misrepresent, from party motives, the truth of history. In the conclusion of his speech, with that obstinacy of prejudice which was so characteristic of his mind, he remonstrated strenuously against altering any part of the established practice of the law.*

The misunderstandings between the chancellor and Mr. Pitt broke out during the session of 1792 into an open rupture. It is probable that Thurlow had resolved to measure his strength against that of the premier; and expected, that when the king should be compelled to choose between Mr. Pitt and himself, his own influence in the royal closet would prevail. The means which he adopted of making this experiment were of a nature which cannot be justified. In his place in the house of lords he attacked, in his usual violent and haughty manner, certain measures brought forward by ministers, which, whatever might be the force of the objections, ought, in the due course of political arrangements, to have been opposed elsewhere. Mr. Pitt having introduced a bill for continuing the sinking fund, and for providing a new one with every future loan, Lord Thurlow vehemently opposed it. "He represented it as exhibiting a degree of presumption and arrogance in dictating to future parliaments, which he trusted the house would never countenance. It was nugatory and impracticable; in his opinion, the inaptness of the project was equal to the vanity of the attempt: none but a novice, a sycophant, a mere reptile as a minister, would allow this act to prevent him from doing what the exi-

* Parl. Hist. vol. xxix. p. 1428.

gency of circumstances might require, according to his own judgment." *

His lordship next attacked a bill, which had passed the lower house, for encouraging the growth of timber in the New Forest. "He objected to what he called the *supposed* principle of the bill, for he would not admit that it was founded on any *real* principle, as tending, under false pretences, to deprive the crown of that landed property to which it was entitled by the constitutional law of the country. He maintained that it was of consequence that the king should have an interest in the land of the kingdom. He allowed the imperfection of the forest laws; but he insisted that the defects of this bill were infinitely more pernicious." In conclusion, "he attacked the framers of the bill, his colleagues in office, in the most pointed and most unjustifiable manner. He openly charged them with having imposed upon their sovereign, and did not scruple to assert that, if the members of that house, who were the hereditary counsellors of the crown, did not interfere in opposition to those who had advised this measure, *all was over.*" † The necessary consequence of these speeches was a representation by Mr. Pitt to the king of the impossibility of his remaining in office in conjunction with Lord Thurlow. To that representation the king yielded; and the great seal, having been demanded from his lordship, was put into commission. It must doubtless have been a mortifying circumstance to the chancellor that his secession from the king's councils was unattended with any of that embarrassment which it might have been thought the loss of his influence would have occasioned.

At this period the public life of Lord Thurlow may be said to have closed. In the year 1797, a project was indeed set on foot for the formation of a new ministry, under the auspices of the Earl of Moira, of which Lord Thurlow was to have been a member ‡; but the design never proceeded beyond the embryo. Occasionally he

* Gifford's Life of Pitt, vol. iii. p. 187. † Id.
‡ Moore's Life of Sheridan, vol. ii. p. 273.

still spoke in parliament, and, in the year 1795, opposed with considerable force the seditious meetings' bill.* He also, in the year 1799, spoke against the bill to prohibit the trading for slaves on the coast of Africa within certain limits.† His time was principally spent at his villa at some distance from town, where he appears to have experienced that tedium which persons accustomed to the activity of public or professional life frequently feel in retirement. At length, after a very short illness of two days, he died at Brighton, on the 12th of September 1806, in the 71st year of his age. He was buried in the Temple church. Though never married, his lordship left three daughters.‡ The title of Thurlow, being entailed on the sons of the then Bishop of Durham, devolved upon that prelate's eldest son, Edward.

The character of Lord Thurlow has been drawn by various hands. The following is from the pen of Sir Nathaniel Wraxall: "Lord Thurlow, who at this time had held the great seal between two and three years, though in point of age the youngest member of the cabinet, enjoyed in many respects greater consideration than almost any other individual composing it. * * * Lord North had derived the greatest assistance from his eloquence and ability. His removal to the house of peers would have left an awful blank on the treasury bench in the midst of the American war, if his place had not, during the two succeeding years, been ably, perhaps fully supplied by Wedderburne. As speaker of the upper house, Lord Thurlow fulfilled all the expectations previously entertained of him. His very person, figure, voice, and manner were formed to lend dignity to the woolsack. Of a dark complexion, and harsh but regular features, with a severe and commanding demeanour, which might be sometimes denominated stern, he impressed his auditors with awe before he opened his lips. Energy, acuteness, and prodigious powers of

* Parl. Hist. vol. xxxiv. pp. 540. 862.
† Id. p. 1133.
‡ Gent. Mag. 1806. p. 882.

argument characterised him in debate. His comprehensive mind enabled him to embrace the question under discussion, whatever it might be, in all its bearings and relations. Nor, if we except Lord Camden, who was already far advanced in life, did the opposition possess any legal talents in the house of peers that could justly be put in competition with those of Lord Thurlow.

"These admirable points were, nevertheless, by no means unaccompanied by corresponding defects. As lord chancellor, he was accused of procrastination in suffering the causes brought before him in his court to accumulate without end. Perhaps this charge, so frequently made against those who have held the great seal, was not more true as applied to him, than of others who succeeded him in his office. But even in parliament his temper, which was morose, sullen, and untractable, sometimes mastering his reason, prevented him from always exerting the faculties with which Nature had endowed him, or at least clouded and obscured their effect. In the cabinet, these defects of character, which rendered him often impracticable, were not to be surmounted by any efforts or remonstrances. It can hardly be believed, that at ministerial dinners, where, after the cloth was removed, measures of state were often discussed or agitated, Lord Thurlow would frequently refuse to take any part. He has even more than once left his colleagues to deliberate, whilst he sullenly stretched himself along the chairs, and fell, or appeared to fall, fast asleep. If I had not received this fact from an eye-witness, and a member of the cabinet, I should not, indeed, venture to report so improbable a circumstance.

"Notwithstanding the ruggedness and asperity which he displayed,—qualities that procured him the nickname of *the tiger*,—no man could at times appear more pleasing, affable, and communicative in conversation. I have once or twice seen him on such occasions, which were more highly valued because they were rare or unex-

pected. During the period of his youth he had led a dissolute life, and had given proofs of his devotion to pleasure scarcely compatible, as it might have been thought, with the severe studies and profession of the law. To these irregularities the Duchess of Kingston imprudently ventured to allude, whilst on her trial at the bar of the house of lords, when Thurlow was attorney-general. Like Henley Earl of Northington, his predecessor in the high office of chancellor, Thurlow mingled oaths and execrations with his common discourse. In the afternoon of life, conviviality, wine, and society unbent his mind. It was with Mr. Rigby, Lord Gower, Lord Weymouth, Mr. Dundas, and a few other select friends, that he threw off his constitutional severity. At the pay-office in Whitehall, where Rigby then resided, Lord Thurlow forgot the double toils annexed to his situation as head of the law and as minister of state. Possessed of facultics so transcendent, however mingled with human weakness and infirmity, he must always be considered as one of the most eminent individuals who sat in the councils of George the third at any period of his reign." *

In his convivial habits the chancellor sometimes found a companion in the premier. "Returning by way of frolic," says Sir Nathaniel Wraxall, "very late at night, on horseback, to Wimbledon from Addiscombe, the seat of Mr. Jenkinson near Croydon, where the party had dined, Lord Thurlow, then chancellor, Pitt, and Dundas found the turnpike-gate, situate between Tooting and Streatham, thrown open. Being elevated above their usual prudence, and having no servant near them, they passed through the gate at a brisk pace, without stopping to pay the toll, regardless of the remonstrances or threats of the turnpike-man, who, running after them, and believing them to belong to some highwaymen who had recently committed some depredations on that road, discharged the contents of his blunderbuss at their backs. Happily he did no injury." †

* Wraxall's Memoirs, vol. i. p. 527. † Id. vol. ii. p. 473.

Dr. Parr, in his celebrated Preface to Bellendenus, has painted, with strong colours, the character of Thurlow: —" Minas possumus contemnere vocemque fulmineam Thrasonici istius oratoris τῆ τὰς ὀῤῥῦς κυανίας ἐπηρκότος, cujus vultum, uti Noviorum istius minoris, ferre posse se negat quadruplatorum genus omne et subscriptorum. Quid enim? truculentus semper incedit, teterque, et terribilis aspectu. De supercilio autem isto quid dicendum est? annon reipublicæ illud quasi pignus quoddam videtur? annon senatus illo, tanquam Atlante cœlum, innititur?"

" Profecto non desunt qui Novium existiment in 'summa feritate esse versutissimum, promtumque ingenio ultra Barbarum.' Quod si demseris illi aut σφοδρότητα quanta in Bruto fuit, aut πικρότητα vere Menippeam, aut προσώπε σκυθρότητα propriam et suam, facile ejus vel prudentiæ vel fidei juris nōdos legumque ænigmata ad solvendum permiseris."

" Fervido quodam et petulanti genere dicendi utitur, eodemque, nec valde nitenti, nec plane horrido. Solutos irridentium cachinnos ita commovet, ut lepores ejus, scurriles et prorsus veteratorios diceres. Omnia loquitur verborum sane bonorum cursu quodam incitato, itemque voce, qua ne subsellia quidem ipsa desiderant pleniorem et grandiorem. In adversariis autem lacerandis ita causidicorum figuras jaculatur, ita callida et malitiosa juris interpretatione utitur, ita furere et bacchari solet, ut sæpe mirere tam alias res agere optimates, ut sit pene insano inter disertos locus.

" Fuit ei, perinde atque aliis, fortuna pro virtutibus. Didicit autem a Muciano, satis clarum esse apud timentem, quisquis timeatur. Corpore ipse ingens, animi immodicus, verbis magnificus, et specie inanium magis quam sapientia validus, studia ad se Optimatium illexit, eamque adeptus est auctoritatem, quæ homini novo pro facundia esse posset. Scilicet, quæ bonis Titio, Seioque turpissima forent, Novium nostrum maxime decent, siquidem e subselliis elapsus de Tribunali nunc pronuntiet, et ex præcone actionum factus sit institor eloquentiæ senatoriæ. Quam igitur in civitate gratiam dicendi

facultate Q. Varius consecutus est, vastus homo atque fœdus, eandem Novius intelligit, illa ipsa facultate, quamcunque habet, se esse in Senatu consecutum —

> 'Ellum, confidens, catus:
> Cum faciem videas, videtur esse quantivis pretî:
> Tristis severitas inest in voltu, atque in verbis fides.'"

The characters of Lord Thurlow drawn by his contemporaries are to be received with some caution. He was a man who principally depended for his reputation upon those external demonstrations of character by which the world is frequently misled. When applied to him, the motto of Lord Somers, *prodesse quam conspici*, must be reversed. His language, his manners, and his demeanour constituted the principal ingredients of the character attributed to him by his contemporaries. In his haughty contempt of the opinions of others lay the wisdom and value of his own; in the dogmatical and peremptory tone of his judgments resided a great part of their profundity and learning; and in his rude and repulsive manners might be discovered the secret of his supposed honesty. But, deprived of these adventitious colourings, his character is seen under a very different aspect; and, when no longer awed by the terrors of his aspect, we are astonished to discover how small was the spirit which dwelt within. To the qualities of a statesman he had no pretensions; and, by the sullen indifference with which he regarded the proceedings of the cabinet, he seems to have admitted his incapacity. During the course of a long official life, he does not appear to have originated any one great measure for the benefit of his country. The strongest political feeling which he exhibited was an attachment to the person of his sovereign; and yet we have seen how easily that sentiment yielded to apprehensions for the safety of his own interests. Throughout the whole of his political career the welfare of the country was a secondary object in his estimation. He neither felt nor professed to feel the high dictates of patriotism. In morals his character was lax; and it is singular that a man whose reputation on that head was

so indifferent, should have acquired the personal friendship of George III. The boldness and resolution with which he grasped honours which ought to have been committed to nobler and purer hands, and the magnanimous bravery with which he asserted his pretensions to retain them, are, perhaps, the only qualities which can excite the admiration of an impartial enquirer into his character. His opinions and conduct, especially in the earlier part of his life, were violently opposed to all popular doctrines, of which and of their supporters he uniformly spoke in terms of contempt and derision. In earlier times he would have formed a fit instrument to carry into effect the high and arbitrary principles of the court, and might have been suitably associated in the councils of Laud and of Strafford. At a later period of life, and especially after his breaking with Mr. Pitt, and his expulsion from office, he assumed a more liberal tone in politics, and opposed some of the attempts made by the minister to circumscribe the liberties of the people.

Of the eloquence of Lord Thurlow, and of his manner in debate, Mr. Butler has given a striking account *: "At times Lord Thurlow was superlatively great. It was the good fortune of the Reminiscent to hear his celebrated reply to the Duke of Grafton, during the enquiry into Lord Sandwich's administration of Greenwich hospital. His grace's action and delivery, when he addressed the house, were singularly dignified and graceful; but his matter was not equal to his manner. He reproached Lord Thurlow with his plebeian extraction, and his recent admission into the peerage: particular circumstances caused Lord Thurlow's reply to make a deep impression on the Reminiscent. His lordship had spoken too often, and began to be heard with a civil but visible impatience. Under these circumstances he was attacked in the manner we have mentioned. He rose from the woolsack, and advanced slowly to the place from which the chancellor generally addresses the house, then fixing on the duke the look of Jove when he grasps

* Reminis. vol. I. p. 199.

the thunder, 'I am amazed,' he said, in a level tone of voice, 'at the attack the noble duke has made on me. Yes, my lords,' considerably raising his voice, 'I am amazed at his grace's speech. The noble duke cannot look before him, behind him, or on either side of him, without seeing some noble peer who owes his seat in this house to his successful exertions in the profession to which I belong. Does he not feel that it is as honourable to owe it to these, as to being the accident of an accident? To all these noble lords the language of the noble duke is as applicable and as insulting as it is to myself. But I don't fear to meet it single and alone. No one venerates the peerage more than I do;—but, my lords, I must say, that the peerage solicited me, not I the peerage. Nay more, I can say, and will say, that as a peer of parliament, as speaker of this right honourable house, as keeper of the great seal, as guardian of his majesty's conscience, as lord high chancellor of England, nay, even in that character alone in which the noble duke would think it an affront to be considered,—as a MAN, I am at this moment as respectable,—I beg leave to add,—I am at this time as much respected, as the proudest peer I now look down upon.' The effect of this speech, both within the walls of parliament and out of them, was prodigious. It gave Lord Thurlow an ascendancy in the house which no chancellor had ever possessed: it invested him, in public opinion, with a character of independence and honour; and this, though he was ever on the unpopular side in politics, made him always popular with the people.

"On many other occasions his lordship appeared to advantage; but, speaking generally, it was only on great occasions that he signalised himself. He was a kind of *guarda costa* vessel, which cannot meet every turn and winding of a frigate that assails her, but, when the opportunity offers, pours a broadside which seldom fails of sinking the assailant.

"His lordship, however, possessed a weapon which he often brought into action with great skill and effect. He

would appear to be ignorant upon the subject in debate, and with affected respect, but visible derision, to seek for information upon it, pointing out, with a kind of dry solemn humour, contradictions and absurdities, which he professed his own inability to explain, and calling upon his adversaries for their explanation. It was a kind of masked battery of the most searching questions, and distressing observations: it often discomfited his adversary, and seldom failed to force him into a very embarrassing position of defence; it was the more effective, as, when he was playing it off, his lordship showed he had the command of much more formidable artillery."

The same writer tells us, that though Lord Thurlow spoke slowly and deliberately, yet his periods were strangely confused, and often ungrammatical. Of his lordship's speeches from the bench, he says, "they were strongly marked by depth of legal knowledge and force of expression, and by the overwhelming power with which he propounded the result; but they were too often enveloped in obscurity, and sometimes reason was rather silenced than convinced."*

The legal talents and acquirements of Lord Thurlow have been the subject of frequent panegyric; but it may, perhaps, be questioned, whether in all cases those eulogiums are just. It has been said,—but with what truth it is difficult to form an opinion,—that his lordship was much indebted to Mr. Hargrave for the learning by which his judgments were sometimes distinguished; and that Mr. Hargrave received a handsome remuneration for these services. "As lord chancellor," says a writer†, who was personally acquainted with his lordship, "from a well-placed confidence in Mr. Hargrave, who was indefatigable in his service, he had occasion to give himself less trouble than any other man in that high station. An old free-speaking companion of his, well known at Lincoln's Inn, would sometimes say to me, 'I met the great law lion this morning going to Westminster; but

* Reminia. vol. i. p. 142. † Cradock's Mem. vol. i. p. 79.

he was so busily reading in the coach what his provider had supplied him with, that he took no notice of me.'"

The ardent zeal with which Lord Thurlow contested the great question of the regency, led him, if we may credit the narrative of one who was a party to the debate, to be guilty of an act of great disingenuousness. Dr. Watson, the Bishop of Landaff, in the course of a speech, in which he supported the claims of the Prince of Wales, incidentally cited a passage from Grotius, with regard to the definition of the word *right*. "The chancellor, in his reply," says the bishop in his memoirs, "boldly asserted that he perfectly well remembered the passage I had quoted from Grotius, and that it solely respected natural, but was inapplicable to civil, rights. Lord Loughborough, the first time I saw him after the debate, assured me that before he went to sleep that night he had looked into Grotius, and was astonished to find that the chancellor, in contradicting me, had presumed on the ignorance of the house, and that my quotation was perfectly correct. What miserable shifts do great men submit to, in supporting their parties! The Chancellor Thurlow," continues the bishop, "was an able and upright judge; but, as the speaker of the house of lords, he was domineering and insincere. It was said of him, that in the cabinet he opposed every thing, proposed nothing, and was ready to support any thing. I remember Lord Camden's saying to me one night, when the chancellor was speaking contrary, as he thought, to his own conviction: 'There, now! I could not do that: he is supporting what he does not believe a word of.'" *

Like Johnson, Lord Thurlow was remarkable for the rudeness which he occasionally exhibited in society, and which was frequently accompanied with vulgarity. "Many stories of Thurlow's rudeness," says Mr. Cradock†, "have been in general circulation; but it should be fairly stated, that he was ever more cautious of speaking offensively amongst inferiors than amongst the great,

* Life of Bishop Watson, p. 221. † Memoirs, vol. i. p. 73.

where he sometimes, indeed, seemed to take a peculiar pleasure in giving proofs of his excessive vulgarity." A single instance of this singular humour will be sufficient. "On his return from Scarborough," says the writer just mentioned, "he made visits to some of those splendid mansions with which the county of York so greatly abounds; and a friend of mine had the honour to meet him at one of them, then full of very high company. Whilst walking in the garden, and they were all admiring the elegancies that surrounded them, the noble proprietor, being near the hothouse, turned to the lord chancellor, and politely asked him whether he would not walk in, and partake of some grapes? 'Grapes!' said Thurlow, 'did I not tell you just now I had got the gripes?' The strangers in the company were all petrified with astonishment; but his lordship might have truly informed them, that his replies were at least as polite and refined as those of a predecessor, the venerable Earl Northington." His lordship had unfortunately acquired a habit of swearing, and with difficulty restrained himself on occasions when such a practice would have been most indecorous. In allusion to this habit, as his lordship, at the commencement of the long vacation, was quitting the court without taking the usual leave of the bar, a young barrister exclaimed to his companion, "He might at least have said d— you!" The chancellor heard the remark, and, returning, politely made his bow.*

A generous patronage of learned men was a redeeming quality of Lord Thurlow's character. The manner in which he interested himself to procure for Dr. Johnson the means of making a journey abroad for the restoration of his health, and the kindness with which he subsequently proffered those means from his own purse, evinced a liberality and delicacy very creditable to his character. Boswell having applied to him without the knowledge of Johnson, his lordship's answer was: "I am much obliged to you for the suggestion, and I will

* Hawkins's Memoirs, vol. ii. p. 312.

adopt and press it as far as I can. The best argument, I am sure, and I hope it is not likely to fail, is, Dr. Johnson's merit. But it will be necessary, if I should be so unfortunate as to miss seeing you, to converse with Sir Joshua on the sum it will be proper to ask: in short, upon the means of setting him out. It would be a reflection upon us all if such a man should perish for want of the means to take care of his health." * The chancellor's application was, unfortunately, not successful; but he desired Sir Joshua Reynolds to let Johnson know, that, on granting a mortgage of his pension, he was at liberty to draw upon him to the amount of five or six hundred pounds; and he explained the meaning of the mortgage to be, that he wished the business to be conducted in such a manner that Dr. Johnson should appear to be under the least possible obligation. To this kind and considerate offer Johnson made the following reply: —

"My Lord,

"After a long and not inattentive observation of mankind, the generosity of your lordship's offer raises in me not less wonder than gratitude. Bounty so liberally bestowed I should gladly receive, if my condition made it necessary; for to such a mind who would not be proud to owe his obligations? But it has pleased God to restore me to so great a measure of health, that, if I should now appropriate so much of a fortune destined to do good, I should not escape from myself the charge of advancing a false claim. My journey to the Continent, though I once thought it necessary, was never much encouraged by my physicians; and I was very desirous that your lordship should be told of it by Sir Joshua Reynolds as an event very uncertain: for if I grew much better, I should not be willing; if much worse, not able to migrate. Your lordship was first solicited without my knowledge; but, when I was told that you were pleased to honour me with your patronage, I did not expect to

* Life of Johnson, vol. iv. p. 370. 3d ed.

hear of a refusal; yet as I have had no long time to brood hope, and have not rioted on imaginary opulence, this cold reception has been scarce a disappointment; and from your lordship's kindness I have received a benefit, which only men like you are able to bestow. I shall now live, *mihi carior*, with a higher opinion of my own merit." *

LORD ASHBURTON.

1731—1783.

JOHN DUNNING was born at Ashburton, in Devonshire, on the 18th of October, 1731, and, being destined by his father for the profession of the law, received a liberal education.

Of the early part of Mr. Dunning's life few details have been preserved. The assistance afforded him by his father being necessarily very small, he was compelled while a student to live in the most economical manner. At this period of his life his intimate friends were Mr. Kenyon, afterwards Lord Kenyon; and the celebrated Horne Tooke, then, like himself, a student of the law. "It would appear," says the biographer of the latter, "that none of the parties were very rich at this period, for they lived with a degree of frugality that will be deemed rather singular, when contrasted with their future wealth and celebrity. I have been frequently assured by Mr. Horne Tooke, that they were accustomed to dine together, during the vacation, at a little eating-house in the neighbourhood of Chancery-lane, for the sum of seven-pence halfpenny each. 'As to Dunning and myself,' added he, 'we were generous, for we gave the girl who waited upon us a penny a piece; but Kenyon, who always knew the value of money, sometimes rewarded her with a halfpenny, and sometimes with a promise.'" †

* Life of Johnson, vol. iv. p. 365. 3d ed.
† Stephens' Life of Tooke, vol. i. p. 81.

On being called to the bar, Mr. Dunning selected the western circuit, which he subsequently exchanged for the northern; and for six or seven years he continued to practise without any considerable emolument. At length, one of the leaders of the circuit having been suddenly attacked with a fit of the gout, placed his briefs in the hands of Mr. Dunning, who conducted himself so ably, that in a short time his practice began rapidly to increase.* He came into universal notice by his argument against general warrants, which fully established his reputation as a lawyer, and may be considered as the foundation of his fortunes.

The practice of Mr. Dunning at the bar now began rapidly to increase; and he had the honour to be elected recorder of Bristol. This appointment was shortly afterwards followed by his promotion to the office of solicitor-general, vacated by Mr. Willes, who, at the commencement of 1768, became one of the judges of the king's bench. On the dissolution of parliament, in the same year, he was returned, by the influence of Lord Shelburne, as member for Calne, in Wiltshire.

Of his political life, during the short period of his filling the office of solicitor-general, there are few traces.

In the debates of the 9th January, 1770, on the address of thanks, Mr. Dunning spoke for and voted with the minority.† The speech which he delivered on the 31st of the same month, on the debate relating to the law of parliament‡, as it applied to the case of Wilkes, appears to have been made after he had ceased to be solicitor-general, the ministry having just been broken up, though he consented to retain the office nominally, until the appointment of a successor. That appointment took place in the following month of March, the office being bestowed upon Thurlow. Upon the resignation of Mr. Dunning, and his appearance in court the following term, without the bar, in his ordinary bar-gown, Lord Mansfield took the opportunity of paying him a singular

* Holliday's Life of Mansfield, p. 56. † Parl. Hist. vol. xvi. p. 726.
‡ Id. p. 803.

and gratifying compliment. After he had made his first motion, his lordship, addressing him, declared, that, in consideration of the office he had held, and his high rank in business, he intended for the future (and thought he should not thereby injure any gentleman at the bar) to call on him next after the king's counsel, serjeants, and the recorder of London. Mr. Caldecott and Mr. Coxe, the two senior outer barristers present, immediately expressed their assent, adding that they had contemplated the proposition themselves.*

While Mr. Dunning continued the nominal solicitor-general, an animated debate occurred in the house of commons, upon the "address, remonstrance, and petition" of the city of London to the king, on the conduct of ministers. The motion made to censure this extraordinary document was vehemently opposed, and, amongst others, by Mr. Dunning. Of that speech no correct report has been preserved; but it is said to have occupied an hour and a half, and to have been one of the finest pieces of argument and eloquence ever heard in the house. † For his exertions on this occasion in their favour, "for having," as they expressed it, "when solicitor-general to his majesty, defended in parliament, on the soundest principles of law and of the constitution, the right of the subject to petition and remonstrate," the city presented to him the freedom of their corporation in a gold box. In his answer to their address, he said, "Convinced as I am that our happy constitution has given us the most perfect system of government that the world has ever seen, and that it is therefore our common interest and duty to oppose every practice and combat every principle that tends to impair it, any other conduct than that which the city of London has been pleased to distinguish by its approbation must, in my own judgment, have rendered me equally unworthy of the office I had then the honour to hold, through his majesty's favour, and of the trust reposed in me as one of the representatives of the people."

* 5 Burr. Rep. 2568. † Parl. Hist. vol. xvi. p. 893.

On the introduction of Mr. Grenville's bill for regulating the proceedings of the house, in cases of controverted elections, Mr. Dunning supported the bill *; and in the debates which took place in 1774, to render that law perpetual, Mr. Dunning voted with the majority. He made a humorous apology for supporting the bill and voting against his own interest; for since the act had been put into execution, not one trial had come into Westminster-hall, and he was confident, that, if the law should be made perpetual, there would not be one. †

In the debate on Mr. Serjeant Glynn's motion, on the 6th of December, 1770, "that a committee be appointed to enquire into the administration of criminal justice and the proceedings of the judges in Westminster-hall, particularly in cases relating to the liberty of the press and the constitutional power and duty of juries," Mr. Dunning distinguished himself greatly by a copious and learned argument against the doctrine as to libels maintained by Lord Mansfield and the court of king's bench. After tracing the tainted sources from which that doctrine was derived, he concluded with a serious accusation of Lord Mansfield, for his conduct on the trial of Almon. "He said he could not with justice deny Lord Mansfield the merit of being the first who had, in a criminal case, made *primâ facie* evidence alone conclusive; but he said there was something more remarkable and peculiar to his lordship: Lord Mansfield was very careful, in the case of Almon, to conceal that part of his doctrine till the trial was over. When Almon's counsel were going to examine a witness, in order to contradict the *primâ facie* evidence, and had declared the purpose for which they called him, and whilst they reasoned amongst themselves aloud, and some of them doubted whether it was incumbent on them to disprove what had not been proved, his lordship told the counsel, 'Follow your own opinion in that: if you think it necessary to examine the witnesses, you will proceed; you ought to consider what is best for your client.' Hints, and looks, and half

* Parl. Hist. vol. xvi. p. 910. † Id. vol. xvii. p. 1071.

words following, persuaded the counsel that they were doing wrong; and, though the witness was sworn, they agreed not to examine him, on a supposition that it was not necessary for their client's defence. His lordship immediately proceeded to direct the jury, and told them, that since the defender had not contradicted by witnesses the *primâ facie* evidence, as he ought to have done, that evidence was conclusive. On this very hinge did the verdict turn; and had his lordship, through the whole course of the trial, but hinted this doctrine, the *primâ facie* evidence would have been contradicted, the witness having been already sworn for that purpose. This management was very much superior to that of the judges he had cited: whatever their doctrines were, they declared them from the beginning and throughout the trial: they did not, by skulking and concealment, filch a conviction from the jury, but committed a bold robbery on justice, looking in the faces of the laws and the defendant." *

In the debate which took place on the 25th of March, 1771, upon the motion for committing the Lord Mayor and Alderman Oliver to the Tower, for their conduct towards the serjeant at arms, Mr. Dunning made a long and animated speech against the right of the house to commit for such a case of contempt. He also took the opportunity of referring to the imperfect state of the representation, in the following strong terms:—"It is a plausible argument, that the voice of the nation is only to be heard in this house; but plausibility does not necessarily imply justice, nor does this house constitute a real representative of the kingdom. The metropolis, for instance, which contains nearly a sixth part of the people, has no more than four members, and many of the principal trading towns are wholly without a member. When this is recollected, sir, and when it is moreover recollected that the inadequacy of parliamentary representation is a subject of universal complaint, there is but a slender basis for asserting that our voice is the

* Parl. Hist. vol xvi. p. 1279.

voice of the kingdom, and that, as such, it should be decisive in every deliberation." *

In all the debates which took place upon the affairs of America, from 1774 to the conclusion of the peace, Mr. Dunning was the strenuous opposer of the various measures of force and coercion adopted by the government. Though, in common with many other friends of liberty, he did not oppose the Boston Port bill; yet on finding, upon the introduction of the bill for regulating the government of Massachusetts Bay, that the same system of severity was to be continued, he resisted that measure with great energy and effect. "I have not," said he, "heard of, nor do I see any overt act of treason stated in the preamble of this bill, so as to authorize the severe punishments which it enacts. We are now, I find, in possession of the whole of that fatal secret which was intended as a corrective for all the disturbances in America: but it does not appear to be either peace or the olive branch; it is war, severe revenge and hatred against our own subjects. We are now come to that fatal dilemma, *Resist, and we will cut your throats; submit, and we will tax you:* such is the reward of obedience." † In the course of the same session, Mr. Dunning also opposed the bill for the government of Quebec. ‡

As the affairs of America drew to a crisis, and the colonists, exasperated by the attempts to force them to obedience, took up arms, Mr. Dunning still continued to advocate the same policy. In the debate of the 2d of February, 1775, on the address to the crown, which stated that a rebellion at that time actually existed in the province of Massachusetts Bay, Mr. Dunning rose immediately after Lord North, who had moved the address, and maintained that the Americans were not in rebellion; that the votes and resolutions of the several congresses were decent and moderate, though firm, declarations of the estimation in which liberty ought to be held, and tempered with the highest expressions of

* Parl. Hist. vol. xvii. p. 142. † Id. p. 1300. ‡ Id. p. 1359. 1396.

loyalty and duty to their sovereign. In conclusion, he said, "I insist that America is not in a state of rebellion. I insist that every appearance of riot, disorder, tumult, and sedition, which the noble lord has so faithfully recounted from newspapers, arises not from disobedience, treason, or rebellion, but is created by the conduct of those who are anxious to establish despotism, and whose views are manifestly directed to reduce America to the most abject state of servility, as a prelude to the realising the same wicked system in the mother country." * In the various debates which occurred in the session of 1775-6, on the employment of foreign troops in America, and upon the introduction of them into Ireland, Mr. Dunning spoke very frequently, vainly directing his arguments, his wit, and his ridicule against the measures of ministers. At the conclusion of the year 1776, he supported a motion, made by Lord John Cavendish, "for the revisal of all acts of parliament by which his majesty's subjects in America think themselves aggrieved." † After the loss of this motion, Mr. Dunning, in common with many others of the friends of America, despairing of better measures, seems to have ceased for a time to take part in the debates on the subject of the colonial disturbances.

But upon the question of suspending the *habeas corpus* act with regard to America, which arose upon the introduction of a bill in the year 1777, "to empower his majesty to secure and detain persons charged with or suspected of the crime of high treason, committed in North America, or on the high seas, or the crime of piracy," Mr. Dunning vigorously opposed the bill, contending that it could "be stretched and twined and twisted by the attorney-general, or by some of his brethren equally ingenious, to affect and reach men who never saw America, or, peradventure, the high seas, as efficaciously, for the mere temporary purposes of persecution and revenge, as if they had been caught in arms, in open rebellion." ‡ On the third reading of the bill he moved

* Parl. Hist. vol. xviii. p. 224. † Id. p. 1447. ‡ Id. vol. xix. p. 7.

an amendment of one of the clauses, to prevent its possible operation in England, which, with some slight alteration, was carried; upon which Mr. Fox congratulated the house and the nation as upon an escape from a state of temporary tyrannic dominion.

The liberality of Mr. Dunning's sentiments upon matters of religion was manifested on the debate in 1778, upon Sir George Savile's bill for the relief of the Roman catholics, which afterwards led to the riots of 1780. Mr. Dunning seconded the motion, and placed in a strong light the harsh, cruel, and unjust penalties to which, under the existing laws, the catholics were exposed.* Again, in the following year, upon the debate on the bill for the relief of protestant dissenters, Mr. Dunning opposed the clause which introduced the following test:—"I, A. B., do solemnly declare, that I am a Christian, and a protestant dissenter, and that I take the holy Scriptures, both of the Old and New Testament, as they are generally received in protestant countries, for the rule of my faith and practice." He maintained that "the enjoyment of any right, civil or religious, in a free government, ought not to be clogged with restrictions; that government having secured the established religion of the country by law, and confined the honours and emoluments of the church to the ministers of that religion, all dissenters from it, while they behaved themselves as loyal subjects, ought to enjoy their own religious opinions without restraint, as a common right belonging to them by the nature of the constitution itself."†

It was during the session of 1779-80, that Mr. Dunning made his most considerable parliamentary efforts. Early in the latter year he supported Sir George Savile's motion for an account of pensions granted during pleasure or otherwise; and in his speech we find some traces of that humour, which those who have drawn his character so highly extol, but which is very seldom met with in the reports of his speeches. "A

* Parl. Hist. vol. xix. p. 1139. † Id. vol. xx. p. 320.

noble lord," said Mr. Dunning, "was against the motion on Tuesday night, from motives of delicacy to some of his old acquaintances in his younger days, certain Lady Betties, and Bridgets, and Jennys, in the kingdom of Ireland; but when his old friends read what he had said of them in the newspapers, they will not much thank him for his delicacy. He freely gives up his old female friends, but screens the great political defaulters, against whom, and whom only, this motion was levelled. Poverty is no disgrace, when it is not brought on by vice or folly. It is no shame for persons nobly descended, when reduced to want through the extravagance or vices of some of their ancestors, to receive bounty from the royal hand. I should be glad to see the list of pensioners made up of persons of that description; but truly I suspect it abounds with persons of far less than even the negative merit of maiden ladies in circumstances of indigence." *

In the course of the American war, which, by its vast expenditure, was exhausting the treasures of the country, various attempts were made by the opposition to introduce an economical reform, which would not only have the effect of relieving the burthens of the people, but also of depressing the influence of the crown. Burke and Barré had already called the attention of parliament to the subject; and, in the month of April, 1780, Mr. Dunning, in a speech which may be regarded as the greatest of his parliamentary efforts, moved, in the committee for considering the petitions for economical reform, the following resolutions:—"That it is the opinion of this committee, that it is necessary to declare that the influence of the crown has increased, is increasing, and ought to be diminished;" and, "That it is competent to the house to examine into and to correct abuses in the expenditure of the civil list revenues, as well as in every other branch of the public revenue, whenever it shall appear expedient to the house so to do." Mr. Dunning was ably supported by Sir Fletcher Norton and Mr.

* Parl. Hist. vol. xxi. p. 88.

Thomas Pitt; and after an ineffectual defence by Lord North, in the course of which it was obvious how much that minister had lost in the favour of the house, both the resolutions were carried.* Inspirited by this triumph, Mr. Dunning, a few days afterwards, moved and carried, in the committee, another resolution—"That it is the opinion of this committee, that, for preserving the independence of parliament, and obviating any suspicion of its purity, there be laid before the house, within seven days after the first day of every session, exact accounts, authenticated by the signatures of the proper officers, of every sum and sums of money paid in the course of the preceding year out of the produce of the civil list, or any other branch of the public revenue, to, or to the use of, or in trust for, any member of either house of parliament, by way of pension, salary, or on any other account whatsoever, specifying when and on what account." †

Although the foregoing resolution was only carried by a majority of two, the opposition determined to push their advantage to the utmost; and after a recess of a few days, occasioned by the illness of the speaker, Mr. Dunning, on the 24th of April, moved an address to the king, the injudicious boldness and novelty of which deprived the opposition of all the advantages which might have flowed from their late successes. In a very full house, he moved, "That an humble address be presented to his majesty, praying that he will be graciously pleased not to dissolve the parliament or prorogue the present session, until proper measures have been taken to diminish the influence and correct the other abuses complained of by the petitions of the people." ‡ After a long and spirited debate, the motion was lost by a majority of fifty-one; many members who had supported Mr. Dunning on the former motions now voting with the minister. After a vehement denunciation of these defaulters from Mr. Fox, Mr. Dunning said that he had now no further measures to propose; that his labours and assiduities were already determined; that when he

* Parl. Hist. vol. xxi. p. 340. † Id. p. 376. ‡ Id. p. 407.

had moved that the committee might be adjourned and kept open till Monday, his intention in so doing was only to give other gentlemen an opportunity of conveying their sentiments through that medium to the house. He said that he had doubted for some days past, but that he despaired since the vote which had now passed, of being able to render any service to his country. Notwithstanding these expressions of disappointment, Mr. Dunning still continued an active attendance on parliament, and spoke several times in the debates on the bill for appointing commissioners to examine the public accounts, on the affair of Sir Hugh Palliser, and on other occasions.

In the session of 1780-81, the legality of the various associations and societies which had been formed for political objects was much debated in parliament, and was maintained with much vigour and eloquence by Mr. Dunning.*

In the following session the American war, now drawing to a crisis, had so far embarrassed the ministry, that, finding themselves unable to continue it with success, they were at length disposed to entertain pacific measures. But here again they met with all the impediments that the opposition, animated by the hope of speedy triumph, could throw in their way. Mr. Dunning said, that "he was not ready to give up the dependency of America; that he thought the ruin of this country was accomplished when America was acknowledged to be independent." † To prevent the proposition which must soon have proceeded from ministers, General Conway, on the 22d of February, 1782, brought forward his motion for putting an end to the war, which, whatever might have been Lord North's private inclinations, he was compelled to oppose, and which was only negatived by a majority of *one*. The fate of his lordship's administration was now decided; and though he continued for upwards of a month to struggle against the superior forces of the opposition, he was ultimately compelled to retire. Mr. Dunning, selected as the

* Parl. Hist. vol. xxii. p. 194. † Id. p. 880.

organ of the ministers elect, to inform the house of commons of the new arrangements, on the 25th of March stated to the house, "that it was with peculiar satisfaction he found himself enabled, through some communication he had had that day with a most respectable member of the upper house, to inform gentlemen that arrangements were now making for forming a new administration, which he trusted would meet the wishes of that house and of the nation at large." * In consequence of this announcement the house adjourned for a few days, at the end of which period the new administration was formed under the auspices of the Marquis of Rockingham, Lord Shelburne and Mr. Fox being appointed secretaries of state.

The fortunes of Mr. Dunning were materially influenced by these changes. The administration had been scarcely formed before a request was preferred by Lord Shelburne to the king for a peerage for his faithful adherent and friend Mr. Dunning. The request thus made by Lord Shelburne was not communicated either by the king or by himself to the Marquis of Rockingham, who had no intimation of the intended honour until Mr. Dunning kissed hands on his creation. The Rockingham part of the administration, irritated by this mark of want of confidence in their leader, immediately resolved that another peerage must be bestowed at the personal recommendation of Lord Rockingham. Sir Fletcher Norton was selected by them as the individual upon whom the honour should be conferred; and the king was informed that, unless a peerage was without the smallest delay conferred upon him, it would be impossible for Lord Rockingham and his friends to remain in power. The usual forms of court etiquette were waved, and Sir Fletcher Norton, with a notice of only a few hours, attended at St. James's and kissed his majesty's hand on his creation as a baron by the title of Baron Grantley. †

On the settlement of the Rockingham administration,

* Parl. Hist. vol. xxii. p. 1237. † Wraxall's Memoirs, vol. ii. p. 162.

Lord Shelburne secured a seat in the cabinet for Lord Ashburton, who was appointed chancellor of the duchy of Lancaster. After his elevation to the peerage, Lord Ashburton did not take any active part in the debates in parliament. His influence was sometimes exerted to prevent the inconveniences and mischiefs which arose from the impracticable temper of the chancellor, Lord Thurlow, who was opposed, both in political views and in personal feelings, to the administration of which he was a member. In the debates on the contractors' bill *, and on the Cricklade election bill †, the name of Lord Ashburton appears; but he never assumed in the house of lords the distinguished position which he occupied in the commons.

On the death of the Marquis of Rockingham, and the removal of Lord Shelburne to the head of the administration, Lord Ashburton continued to fill the office of chancellor of the duchy of Lancaster, and was consulted as the confidential adviser of the premier. In an interview which Dr. Watson the Bishop of Landaff had with Lord Shelburne, that nobleman, after expressing a desire that they might be better acquainted, said, that as he had Dunning to assist him in matters of law, and Barré to advise with upon army affairs, he should, in the same manner, be happy to avail himself of the bishop's services in consulting on the interests of the church. ‡ A civil reply was the sole service rendered by the bishop; but the more substantial exertions of Dunning and Barré met with a substantial reward. They both received pensions; the former to the amount of 4000*l.* per annum, an application of the public money which gave rise to much observation in parliament. § Of the relation which subsisted between Lord Shelburne, Colonel Barré, and himself, Mr. Dunning thus spoke, in the course of his celebrated motion respecting the influence of the crown:—"I would add a word or two respecting my honourable friend below me (Colonel Barré).

* Parl. Hist. vol. xxii. p. 1377. † Id. p. 1385.
‡ Life of Watson, p. 95. § Parl. Hist. vol. xxiii. p. 582. &c.

For the faithful and disinterested performance of his duty in this house, how has he been treated by some of his opponents? He has been called a dependant; I presume, alluding to the honour he enjoys in the friendship and intimacy of a certain noble lord, a member of the other house (Lord Shelburne). If that intimacy and friendship be a state of dependence, I am happy in classing myself among that noble lord's dependants. I will assure those, who have alluded to what they call dependence, that it is a state of dependence accompanied with perfect freedom. It is true my honourable friend has been honoured with the noble lord's friendship for upwards of twenty years; but I think I know the frame of mind and disposition of my honourable friend too well to be persuaded that he would purchase any man's intimacy upon any terms short of perfect equality and mutual confidence; and I think I may likewise add, that if any person should attempt to purchase the noble lord's friendship by mean or improper concessions, there is not a man on earth would more readily see through or despise it. I know the noble lord to be a great private as well as public character. I know my honourable friend to possess a spirit of true independence. I am persuaded of the noble lord's great and acknowledged talents as a senator and a politician, and I can add, great as he may appear in a public light, that his private character is no less amiable and worthy of general admiration." *

In the year 1780, Lord Ashburton married Elizabeth, the daughter of John Baring, Esq. of Larkbear in Devonshire, by whom he had two sons, the elder of whom died in April 1783, aged seventeen months. This affliction is said to have weighed most heavily on the spirits of Lord Ashburton, in whom the parental affections existed in their liveliest form. From this period his health rapidly declined. Shortly before his decease an affecting interview is said to have taken place between him and another celebrated lawyer, Mr. Wallace, who

* Parl. Hist. vol. xxi. p. 346.

also died in the autumn of 1783. "I have been assured," says Sir Nathaniel Wraxall, "that a short time before Lord Ashburton's decease, these two distinguished lawyers, finding themselves by accident in the same inn at Bagshot, the one on his way down into Devonshire, and the other returning from thence to London, both conscious that their recovery from the disorders under which they laboured was desperate, expressed a strong mutual wish to enjoy a last interview with each other. For that purpose they were carried into the same apartment, laid down on two sofas nearly opposite, and remained for a long time in conversation; they then parted, as men who would not hope to meet again in this world. By Wallace's decease, Lee became attorney-general, and Mansfield was replaced in his former situation of solicitor-general, which he had filled under Lord North's administration." * Lord Ashburton died in the month of August, 1783.

The character of Lord Ashburton has been drawn by the friendly hand of Sir William Jones, who was indebted to him for various benefits.

"The public are here presented, not with a fine picture, but a faithful portrait; with the character of a memorable and illustrious man, not in the style of panegyric on a monument, but in the language of sober truth, which friendship itself could not induce the writer to violate.

"John Dunning (a name to which no title could add lustre) possessed professional talents, which may truly be called inimitable; for, besides their superlative excellence, they were peculiarly his own; and as it would scarcely be possible to copy them, so it is hardly probable that nature or education will give them to another. His language was always pure, always elegant, and the best words dropped easily from his lips into the best places, with a fluency at all times astonishing, and, when he had perfect health, really melodious. His style of speaking consisted of all the turns, oppositions, and figures which the old rhetoricians taught, and which

* Wraxall's Memoirs, vol. ii. p. 385.

Cicero frequently practised, but which the austere and solemn spirit of Demosthenes refused to adopt from his first master, and seldom admitted into his orations, political or forensic.

"Many at the bar and on the bench thought this a vitiated style; but though dissatisfied as critics, yet, to the confusion of all criticism, they were transported as hearers. That faculty, however, in which no mortal ever surpassed him, and which all found irresistible, was his wit. This relieved the weary, calmed the resentful, and animated the drowsy; this drew smiles even from such as were the object of it, scattered flowers over a desert, and, like sunbeams sparkling on a lake, gave spirit and vivacity to the dullest and least interesting cause. Not that his accomplishments as an advocate consisted principally in volubility of speech or liveliness of raillery. He was endowed with an intellect sedate yet penetrating, chaste yet profound, subtle yet strong. His knowledge, too, was equal to his imagination, and his memory to his knowledge. He was no less deeply learned in the sublime principles of jurisprudence and the particular laws of his country, than accurately skilled in the minute but useful practice of our different courts. In the nice conduct of a complicated cause, no particle of evidence could escape his vigilant attention, no shade of argument could elude his comprehensive reason: perhaps the vivacity of his imagination sometimes prompted him to sport where it would have been wiser to argue; and, perhaps, the exactness of his memory sometimes induced him to answer such remarks as hardly deserved notice, and to enlarge on small circumstances which added little to the weight of his argument; but those only who have experienced, can in any degree conceive, the difficulty of exerting all the mental faculties in one instant, when the least deliberation might lose the tide of action irrecoverably. The people seldom err in appreciating the merits of a speaker; and those clients who were too late to engage Dunning on their side never thought themselves secure of success,

while those against whom he was engaged were always apprehensive of a defeat.

"As a lawyer, he knew that Britain could only be governed happily on the principles of her constitution or public law; that the regal power was limited, and popular rights ascertained by it; but that the aristocracy had no other power than that which too naturally results from property, and which laws ought rather to weaken than fortify; and he was therefore an equal supporter of just prerogative and of national freedom, weighing both in the noble balance of our recorded constitution. An able aspiring statesman, who professed the same principles, had the wisdom to solicit and the merit to obtain the friendship of this great man; and a connection, planted originally on the firm ground of similarity in political sentiments, ripened into personal affection, which nothing but death could have dissolved or impaired. Whether in his ministerial station he might not suffer a few prejudices insensibly to creep on his mind, as the best men have suffered, because they were men, may admit of a doubt; but if even prejudiced, he was never uncandid; and, though pertinacious in all his opinions, he had great indulgence for such as differed from him.

"His sense of honour was lofty and heroic; his integrity stern and inflexible; and though he had a strong inclination for splendour of life, with a taste for all the elegancies of society, yet no love of dignity, of wealth, or of pleasure could have tempted him to deviate, in a single instance, from the straight line of truth and honesty. He carried his democratical principles even into social life, where he claimed no more of the conversation than his just share, and was always candidly attentive when it was his turn to be hearer. His enmities were strong yet placable, but his friendships were eternal; and if his affections ever subdued his judgment, it must have been in cases where the fame or interest of a friend was nearly concerned. The veneration with which he constantly treated his father, whom his fortunes and reputation had made the happiest of mortals, could be

equalled only by the amiable tenderness which he showed as a parent. He used to speak with wonder and abhorrence of Swift, who was not ashamed to leave a written declaration that he could never be fond of children, and with applause of the caliph, who on the eve of a decisive battle, which was won by his valour and wisdom, amused himself in his tent with seeing his children ride on his scimitar and play with his turban; and dismissed a general, as unlikely to treat the army with lenity, who durst reprove him for so natural and innocent a recreation.

"For some months before his death the nursery had been his chief delight, and gave him more pleasure than the cabinet could have afforded; but this parental affection, which had been the source of so much felicity, was, probably, a cause of his fatal illness. He had lost one son, and expected to lose the other, when the author of this painful tribute to his memory parted from him with tears in his eyes, little hoping to see him again in a perishable state. As he perceives, without affectation, that his tears now steal from him, and begin to moisten the paper on which he writes, he reluctantly leaves a subject which he could not soon have exhausted; and when he also shall resign his life to the great Giver of it, he desires no other decoration of his humble gravestone than this honourable truth—

'With none to flatter, none to recommend,
DUNNING approved and mark'd him as a friend.'"

It is curious to contrast the preceding sketch with another character of Lord Ashburton, drawn also by one of his contemporaries: "Never, perhaps," says Sir Nathaniel Wraxall, "did nature inclose a more illuminated mind in a body of meaner and more abject appearance. It is difficult to do justice to the peculiar species of ugliness which characterised his person and figure, though he did not labour under any absolute deformity of shape or limb: a degree of infirmity, and almost of debility or decay, in his organs, augmented the effect of his other bodily misfortunes; even his voice

was so husky and choked with phlegm, that it refused utterance to the sentiments which were dictated by his superior intelligence. In consequence of this physical impediment, he lay always under a necessity of involuntarily announcing his intention to address the house, some time before he actually rose, by the repeated attempts which he made to clear his throat. But all these imperfections and defects of configuration were obliterated by the ability which he displayed. In spite of the monotony of his tones, and his total want of animation, as well as grace, yet so powerful was reason when flowing from his lips, that every murmur became hushed, and every ear attentive. It seemed, nevertheless, the acute sophistry of a lawyer, rather than the speech of a man of the world, or the eloquence of a man of letters and education. Every sentence, though admirable in itself, yet resembled more the pleading of the bar than the oratory of the senate; so difficult is it for the most enlightened intellect to throw off the habit of a profession. Dunning neither delighted nor entertained his hearers; but he subdued them by his powers of argumentative ratiocination, which have rarely been exceeded. They soon afterwards raised him to the peerage, and just in time to attain that elevation, as his constitution speedily sunk under accumulated disorders, which hurried him prematurely to the grave. This extraordinary man, who was not exempt from great infirmity of mind, felt or perceived so little his corporeal deficiencies as to consider his person with extraordinary predilection. Fond of viewing his face in the glass, he passed no time more to his satisfaction than in decorating himself for his appearance in the world. He and Barré, who were fellow-labourers in the same vineyard, represented likewise the same borough, Calne, and belonged or at least looked up to the same political chief, Lord Shelburne. They, consequently, were animated by no common principle of union or of action with Fox and Burke, except one, that of overturning the administration. On all other points, a secret jealousy and

rivalry subsisted between the adherents of the Shelburne and the Rockingham parties." *

In his speech to the electors of Bristol, Mr. Burke, in referring to Sir George Savile's bill for relieving the catholics, pronounced the following panegyric upon Mr. Dunning: — "The seconder was worthy of the mover and the motion: I was not the seconder; it was Mr. Dunning, recorder of this city. I shall say the less of him, because his near relation to you makes you more particularly acquainted with his merits. But I should appear little acquainted with them, or little sensible of them, if I could utter his name on this occasion without expressing my esteem for his character. I am not afraid of offending a most learned body, and most jealous of its reputation for that learning, when I say he is the first of his profession. It is a point settled by those who settle every thing else; and I must add (what I am enabled to say from my own long and close observation), that there is not a man of any profession, or in any situation, of a more erect and independent spirit, of a more proud honour, a more manly mind, a more firm and determined integrity." †

SIR WILLIAM JONES.

1746—1794.

William Jones, whose reputation as a lawyer has been almost forgotten in his skill as a linguist, and in his extensive and elegant acquirements as a scholar, was born in London in the year 1746. His father was a person of much information and of considerable celebrity as a man of science, and had acquired the friendship of Newton and other distinguished persons of his day. He died about three years after the birth of his son William, who was left to the care of his mother, a woman of

* Memoirs, vol. ii. p. 41. † Burke's Works, vol. ii. p. 300. 2d ed.

strong mind and great good sense, who devoted herself with affectionate zeal to the performance of this duty. Rejecting altogether the system of severity which was at that period so much in vogue, she taught her son to love instruction by rendering it pleasant to him. Her principal endeavour was to instil into him a desire for information, and to his incessant questions her answer invariably was, *read, and you will know*: a maxim to which, in after life, he often acknowledged his obligations.

Having thus imbibed from his mother an early taste for literature, he was placed, in the year 1753, at Harrow-school, then under the superintendence of Dr. Thackeray. During the first two years of his residence at Harrow, he was distinguished rather by his diligence than by the superiority of his talents. At the end of that period he had the misfortune to break his thigh-bone, an accident which detained him at home for upwards of a year. But this period was not mispent. His excellent mother was his constant companion; and under her care he became acquainted with some of our best English writers. On his return to school, he was placed in the same class in which he would have stood had not his studies been interrupted; a circumstance which stimulated his industry, and developed the extraordinary powers of acquisition with which he was gifted. His progress was now rapid; and in his twelfth year he was removed into the upper school, where he distinguished himself by the performance of various exercises not required by the discipline of the school. He made copious translations, into English verse, of the Latin poets; and at this early age composed a dramatic piece on the story of Meleager, which was acted by himself and his schoolfellows. So great was his diligence, that he devoted to study many of the hours usually allotted to recreation; and his acquirements were consequently such as to attract the attention of the masters, and the admiration of his associates. Amongst the latter, Dr. Bennett, afterwards Bishop of Cloyne, and the celebrated

Dr. Parr, were his most intimate friends. The former has drawn a pleasing sketch of Sir William Jones's character at this period. "I knew him from the age of eight or nine years, and he was always an uncommon boy. Great abilities, great particularity of thinking, fondness for writing verses and plays of various kinds, and a degree of integrity and manly courage, of which I remember instances, distinguished him even at that period. I loved him, and revered him; and, though one or two years older than he was, was always instructed by him from my earliest age." Dr. Thackeray's opinion of the capacity and talents of his pupil was expressed in terms equally strong. "So active," he said, "was the mind of Jones, that if he were left, naked and friendless, on Salisbury Plain, he would, nevertheless, find the road to fame and riches." The zeal and industry of young Jones were such during the latter part of his residence at Harrow, that he frequently devoted the night to study, taking coffee and tea as an antidote to drowsiness; till at length, his eyesight being affected, such close application to his studies was forbidden.

In the seventeenth year of his age, his mother determined to remove him to the university, though strongly advised by Mr. Serjeant Prime and others of her friends to place him at that early age under the superintendence of some eminent special pleader. Accordingly, in the spring of 1764, he was entered at University College, Oxford; but the course of study, at that time pursued there, by no means satisfied his expectations. Instead, therefore, of confining himself to the usual discipline of the college, he continued the course of classical reading which had become so grateful to him during his pupilage at Harrow; and also employed a considerable portion of his time in those oriental studies for which he was afterwards so much celebrated. Having discovered a native of Aleppo in London, he persuaded him to change his residence to Oxford, and with his assistance he mastered the Arabic, and subsequently the Persic. His vacations were generally spent in London,

where he frequented the fencing school of Angelo; while at home, his time was occupied in the perusal of the best authors in the Italian, Spanish, and Portuguese languages. Although Mr. Jones had, shortly after his arrival at the university, been unanimously elected one of the four scholars on the foundation of Sir Simon Bennett, and looked forward with confidence to the prospect of a fellowship at some distant period, yet the smallness of his fortune induced him to accede to an offer made to him on behalf of Lord Spencer to become private tutor to his son Lord Althorpe, at that time only seven years of age. Soon after the acceptance of this offer he was elected fellow on the foundation of Sir Simon Bennett.

While in attendance upon his pupil at Althorpe and in London, Mr. Jones continued to prosecute his oriental studies; and when yet in the 21st year of his age he commenced his Commentaries on Asiatic Poetry. In the year 1767, he accompanied the family of Lord Spencer on a continental tour; and while at Spa, with that versatility of accomplishment which was a distinguishing feature of his mind, he availed himself of the services of Janson, a celebrated dancing-master. He continued to reside for several years in the family of Lord Spencer, and at Harrow with his pupil, during which time he formed some valuable friendships, especially with a distinguished oriental scholar, Count Reviczki, afterwards the imperial minister at Warsaw, and ambassador at the court of England. During the same period also he translated into French the Life of Nadir Shah from the Persian, a task which he undertook by the desire of the King of Denmark.

In the year 1770, Mr. Jones was induced, by the advice of his friends, who were anxious that his fine talents should have an adequate field for their display, to resign his situation as tutor to Lord Althorpe, and to apply himself to the study of the law. He had, a few years before, been led by curiosity to peruse the treatise of Fortescue, *De Laudibus Legum Angliæ*, which appears to

have made a very favourable impression on his mind, and to have created a desire for a more intimate acquaintance with legal writers. Accordingly, on the 19th Sept. 1770, he was admitted a student of the Temple, and commenced his legal studies in conjunction with those more liberal pursuits which had hitherto been prosecuted by him with undivided assiduity. Of this change in his destination, he thus speaks in a letter to his friend Reviczki: — "On my late return to England, I found myself entangled, as it were, in a variety of important considerations. My friends, companions, relations, all attacked me with urgent solicitations to banish poetry and oriental literature for a time, and apply myself to oratory and the study of the law; in other words, to become a barrister, and pursue the track of ambition. Their advice, in truth, was conformable to my own inclinations; for the only road to the highest stations in this country is that of the law, and I need not add how ambitious and laborious I am." In another letter, written soon afterwards, and addressed to his friend Mr. Wilmot, the son of the chief justice of the common pleas, Sir J. Eardley Wilmot, he thus speaks of the commencement of his legal studies: — "I have just begun to contemplate the stately edifice of the laws of England —

'The gather'd wisdom of a thousand years —'

if you will allow me to parody a line of Pope. I do not see why the study of the law is called dry and unpleasant; and I very much suspect, that it seems so to those only who would think any study unpleasant which required a great application of the mind and exertion of the memory. I have just read most attentively the two first volumes of Blackstone's Commentaries, and the two others will require much less attention. I am much pleased with the care he takes to quote his authorities in the margin, which not only give a sanction to what he asserts, but point out the sources to which the student may refer for more diffusive knowledge. I have opened

two common-place books, the one of the law, the other of oratory, which is surely too much neglected by our modern speakers. I do not mean the popular eloquence which cannot be tolerated at the bar; but that correctness of style and elegance of method which at once pleases and persuades the hearer. But I must lay aside my studies for about six weeks, while I am printing my Grammar, from which a good deal is expected, and which I must endeavour to make as perfect as a human work can be. When that is finished, I shall attend the court of king's bench very constantly, and shall either take a lodging in Westminster, or accept the invitation of a friend in Duke-street, who has made an obliging offer of apartments."

The unceasing activity of mind, and the ardent ambition which distinguished Mr. Jones at this period of his life, are manifested in a letter addressed by him to his friend Dr. Bennett. — "I have learned so much, seen so much, written so much, said so much, and thought so much, since I conversed with you, that, were I to attempt to tell half what I have learned, seen, writ, said, and thought, my letter would have no end. I spend the whole winter in attending the public speeches of our greatest lawyers and senators, and in studying our own admirable laws, which exhibit the most noble example of human wisdom that the mind of man can contemplate. I give up my leisure hours to a political treatise on the Turks, from which I expect some reputation; and I have several objects of ambition which I cannot trust to a letter, but will impart to you when we meet. If I stay in England, I shall print my *De Poesi Asiaticâ* next summer, though I shall be at least two hundred pounds out of pocket by it. In short, if you wish to know my occupations, read the beginning of Middleton's Cicero, p. 13 — 18, and you will see my model; for I would willingly lose my head at the age of sixty if I could pass a life at all analogous to that which Middleton describes."*

* Parr's Works, vol. i. p. 55.

The reputation which, even at this early age, Mr. Jones had gained by his literary efforts, was adverse, in his own opinion at least, to his success at the bar. Speaking of the publication of his poems, in a letter addressed to his friend Mr. Hawkins, he says — "As to the years in which the poems were written, I would wish to specify them, for it would hurt me as a student at the bar to have it thought that I continue to apply myself to poetry; and I mean to insinuate, that I have given it up for several years, which I must explain more fully in the preface: for a man who wishes to rise in the law must be supposed to have no other object." In the year 1772, the poems of which he speaks, consisting principally of translations from the Asiatic languages, were published; and, in 1774, he gave to the world his celebrated Commentaries on Asiatic Poetry.

In January, 1774, he was called to the bar, and devoted himself to his profession with much earnestness. Entirely abandoning his politer studies, he left the whole of his library, not relating to law and oratory, at Oxford. In a letter, written in the autumn of 1774, he says, — "I have deserted, or rather suspended, all literary pursuits whatever, and am wholly engaged in the study of a profession for which I was always intended. As the law is a jealous science, and will not have any partnership with the eastern Muses, I must absolutely renounce their acquaintance for ten or twelve years to come." Notwithstanding this abandonment of literature as an occupation, Mr. Jones continued his correspondence with various learned men both at home and abroad, whose letters evince the high sense which the writers entertained of his great acquirements and extensive learning.

For a short time after he was called to the bar, Mr. Jones appears to have declined practice, probably from an idea that he had not yet sufficiently perfected himself in his professional studies. Regarding the law as a science, he commenced the study of it on a wide and liberal scale. He compared the systems of ancient times with those of modern adoption, and with infinite labour

he examined and collated the various codes of modern Europe. In the year 1775, for the first time, he attended the circuit and sessions at Oxford, and in the course of the same year he became a regular attendant at Westminster-hall. In the following year, he received, without solicitation, the appointment of one of the commissioners of bankrupt, by the gift of Lord Chancellor Bathurst, to whom, in the dedication of his translation of Isæus, he acknowledges his obligation in the following terms:—"I check myself, therefore, my lord, with reluctance, and abstain from those topics, to which the overflowing of my zeal would naturally impel me; but I cannot let slip this opportunity of informing the public, who have hitherto indulgently approved and encouraged my labours, that although I have received many signal marks of friendship from a number of illustrious persons, to whose favours I can never proportion my thanks, yet your lordship has been my greatest, my only benefactor; that, without any solicitation, or even request, on my part, you gave me a substantial and permanent token of regard, which you rendered still more valuable by your obliging manner of giving it, and which has been literally the sole fruit that I have gathered from an incessant course of very painful toil; that your kind intentions extended to a larger field, and that you had even determined to reward me in a manner the most agreeable both to my inclinations and to the nature of my studies, if an event, which has procured an accession to your happiness, and could not but conduce to mine, had not prevented the full effects of your kindness."

It appears from his correspondence, that, soon after he was called to the bar, Mr. Jones acquired considerable practice. In a letter to Schultens, dated July, 1777, he says, "I should have great pleasure in complying with your kind and friendly request, by furnishing my contribution to the new work which is soon to appear amongst you, and would exert myself to this purpose; but the absolute want of leisure makes it impossible. My law employments, attendance in the courts, incessant

studies, the arrangement of pleadings, trials of causes, and opinions to clients, scarcely allow me a few moments for eating and sleeping." So close was his application, that, at the conclusion of the year, he was compelled to visit Bath, in order to refresh his exhausted spirits, where, as he informs his friend Lord Althorpe, "he abstained with reluctance from dancing, an amusement too heating for a water-drinker."

Amongst the mixed legal and classical studies in which Mr. Jones so much delighted, he had made a version of the orations of Isæus, which had hitherto been seldom read and imperfectly understood. This translation, which appeared in 1778, was accompanied by a preface, in which we find the following excellent observations on the benefits to be derived by a student of the law from an examination of the judicial polity of other nations:—"There is no branch of learning from which a student of the law may receive a more rational pleasure, or which seems more likely to prevent his being disgusted with the dry elements of a very complicated science, than the history of the rules and ordinances by which nations eminent for wisdom and illustrious in arts have regulated their civil polity: nor is this the only fruit he may expect to reap from a general knowledge of foreign laws, both ancient and modern; for while he indulges the liberal curiosity of a scholar in examining the customs and institutions of men, whose works have yielded him the highest delight, and whose actions have raised his admiration, he will feel the satisfaction of a patriot in observing the preference due in most instances to the laws of his own country above those of all other states; or, if his just prospects in life give him hopes of becoming a legislator, he may collect many useful hints for the improvement even of that fabric which his ancestors have erected with infinite exertions of virtue and genius, but which, like all human systems, will ever advance nearer to perfection, and ever fall short of it."

The acquirements of Mr. Jones in oriental literature, and his want of fortune, induced him at an early period

to look to a judicial seat in the East, to which he appears to refer in a letter addressed to Lord Althorpe, in October, 1778: "The disappointment to which you allude, and concerning which you say so many friendly things, to me is not yet certain. My competitor is not yet nominated: many doubt whether he will be; I think he will not, unless the chancellor should press it strongly. It is still the opinion and wish of the bar that I should be the man. I believe the minister hardly knows his own mind. I cannot legally be appointed till January, or next month at soonest, because I am not a barrister of five years' standing till that time; now, many believe that they keep the place open for me till I am qualified. I certainly wish to have it, because I wish to have twenty thousand pounds in my pocket before I am eight-and-thirty years old, and then I might contribute in some degree towards the service of my country in parliament, as well as at the bar, without selling my liberty to a patron, as too many of my profession are not ashamed of doing; and I might be a speaker in the house of commons in the full vigour and maturity of my age; whereas, in the slow career of Westminster-hall, I should not, perhaps, even with the best success, acquire the same independent station till the age at which Cicero was killed. But be assured, my dear lord, that if the minister be offended at the style in which I have spoken, do speak, and will speak, of public affairs, and on that account should refuse to give me the judgeship, I shall not be at all mortified, having already a very decent competence, without a debt or care of any kind."

The enlightened sentiments of Mr. Jones on political subjects had induced him, in common with all liberal-minded men, to regard with disapprobation the conduct of the government towards the American colonists. His feelings on the great contest in which they had been engaged with the mother country were expressed in a Latin ode, which he published in the month of March, 1780. Soon afterwards, on the resignation of Sir Roger Newdigate, he was induced, by the advice of several highly

respectable friends, to suffer his name to be proposed as a candidate for the representation of the university of Oxford. Various circumstances, however, combined to prevent his return, and more especially the liberality of his political principles. "Have you no apprehensions," says his friend Schultens, "that your enthusiasm for liberty, which is so generally known, may, in these unpropitious times, injure the success of your cause?" His adversaries did not scruple to represent him as a person whose opinions tended to the subversion of the constitution; and, the prejudices of the university being once excited, he felt that it would be in vain to contend against them. He therefore declined a poll, and again gave the whole of his attention to his professional employments.

While on the summer circuit this year, he defended a man who was indicted, in Pembrokeshire, for the singular offence of alarming the neighbourhood, by a report that a hostile ship of war was approaching. "The prosecutors," says Mr. Jones, "were two magistrates (one of whom was an Indian——), who were angry at having been *made fools of*, a point, however, which they could not easily have proved, inasmuch as they were fools already made. I defended the prosecuted man with success, and mingled in my speech many bitter reflections on the state of this country at the time of the alarm, and on the attempt, because the English laws were not relished in India, to import the Indian laws into England, by imprisoning and indicting an honest man who had done no more than his duty, and whose only fault was fear, of which both his prosecutors were equally guilty."

The extensive and dangerous riots which occurred in London in the year 1780, and in which, as we have seen, the valuable collections of Lord Mansfield perished, induced Mr. Jones to enquire into the methods provided by law for the suppression of such tumultuous assemblies; and the result of his researches was communicated to the world in a small pamphlet, entitled, *An Enquiry into the legal Mode of suppressing Riots, with a constitutional*

Plan of future Defence. He also took occasion, in the autumn of this year, to address the freeholders of Middlesex, and he subsequently drew up a discourse, containing the purport of what he would have spoken, had an opportunity of so doing occurred. This speech is mentioned for the purpose of introducing the animated protest against slavery contained in it. "I pass with haste by the coast of Africa, whence my mind turns with indignation at the abominable traffic in the human species, from which a part of our countrymen dare to derive their most inauspicious wealth. Sugar, it is said, would be dear, if it were not worked by blacks in the western islands, as if the most laborious, the most dangerous works were not carried on in every country, but chiefly in England, by freemen; in fact, they are so carried on with infinitely more advantage; for there is an alacrity in a consciousness of freedom, and a gloomy sullen indolence in a consciousness of slavery: but let sugar be as dear as it may, it is better to eat none, to eat honey, if sweetness only be palatable; better to eat aloes or coloquintida than violate a primary law of nature impressed on every heart not imbruted by avarice, than rob one human creature of those eternal rights of which no law upon earth can justly deprive him."

Some idea of the acquirements of Mr. Jones, at this period of his life, and of the resolute industry with which he pursued his studies, may be formed from the following memorandum:—

"*Resolved* to learn no more *rudiments* of any kind, but to perfect myself in

"First, twelve languages, as the *means* of acquiring accurate knowledge of

I. History.

1. Man. 2. Nature.

II. Arts.

1. Rhetoric. 2. Poetry. 3. Painting. 4. Music.

III. Sciences.

1. Law. 2. Mathematics. 3. Dialectics.

" *N. B.*—Every species of human knowledge may be reduced to one or other of these divisions. Even *law* belongs partly to the history of man, partly as a science to dialectics.

" The twelve languages are,

Greek,
Latin,
Italian, French, Spanish, Portuguese,
Hebrew, Arabic,
Persian,
Turkish,
German, English.

1780."

About this period, he gave to the world his celebrated *Essay on the Law of Bailments*, in which he treated the subject with an accuracy of method hitherto seldom exhibited by our legal writers. At the same time, he intimated an intention, if his present attempt should be approved, and his leisure should permit him, to discuss, in the same form, the various branches of English law, civil and criminal, public and private. With a view also to his favourite object of an Indian judgeship, he undertook, about this time, the translation of an Arabian poem on the Mahometan law of succession to the property of intestates.*

The manly candour and independence ever displayed by Mr. Jones in the expression of his political sentiments, induced him, in the year 1782, to attend a meeting at the London Tavern, to consider the best means of procuring a reform in the commons house of parliament. Having attentively studied the history of our constitution, and considered it with reference both to theory and practice, he had formed a strong opinion on the propriety and necessity of rendering the representation more equal and more extended. These sentiments Mr. Jones publicly expressed, and afterwards gave them to the world in a

* Works, vol. viii. p. 183.

printed form. He also became a member of the Society for Constitutional Reformation.

But politics were not suffered to engross the active mind of Mr. Jones. From a letter to Dr. Shipley, the bishop of St. Asaph, dated in September, 1782, we find that he was still pursuing his professional studies with avidity. "The delays about the Indian judgeship have, it is true, greatly injured me; but with my patience and assiduity I could easily recover my lost ground. I must, however, take the liberty here to allude to a most obliging letter of your lordship, from Chilboltot, which I received so long ago as last November, but was prevented from answering till you came to town. It was inexpressibly flattering to me; but my intimate knowledge of the nature of my profession obliges me to assure you, that it requires the whole man, and admits of no concurrent pursuits; that, consequently, I must either give it up, or it will engross me so much, that I shall not for some years be able to enjoy the society of my friends or the sweets of liberty. Whether it be a wise part to live uncomfortably in order to die wealthy, is another question; but this I know by experience, and have heard old practitioners make the same observation, that a lawyer who is in earnest must be chained to his chambers and the bar for ten or twelve years together. In regard to your lordship's indulgent and flattering prediction, that my Essay on Bailment would be my last work, and that for the future business and the public would allow me to write no more, I doubt whether it will be accomplished, whatever may be my practice or situation; for I have already prepared many tracts on jurisprudence, and when I see the volumes written by Lord Coke, whose annual gains were twelve or fourteen thousand pounds, by Lord Bacon, Sir Matthew Hale, and a number of judges and chancellors, I cannot think, that I should be hurt in my professional career by publishing, now and then, a law tract upon some interesting branch of the science; and the science itself is indeed so complex, that without *writing*, which is *the chain of memory*, it is impossible to remember a thousandth part

of what we read or hear. Since it is my wish, therefore, to become in time as great a lawyer as Sulpicius, I shall probably leave as many volumes of my works as he is said to have written. As to politics, I begin to think that the natural propensity of men to dissent from one another will prevent them, in a corrupt age, from uniting in any laudable design; and at present I have nothing to do but to *rest on my oars*, as the Greek philosophers, I believe, called ἐπέχειν, a word which Cicero applies in one of his letters to the same subject."

In furtherance of the political views which he professed, Mr. Jones composed a tract, under the title of *A Dialogue between a Farmer and Country Gentleman, on the Principles of Government.* Of this little work the Dean of St. Asaph published an edition in Wales, for which it was thought proper to prefer a bill of indictment against him. Mr. Jones, on being informed of this circumstance, with the fearless generosity by which he was distinguished, immediately addressed a letter to Lord Kenyon, then the chief justice of Chester, in which he avowed himself to be the author of the dialogue, and maintained that every position in it was strictly conformable to the laws and constitution of England.

At length the object which Mr. Jones had been long anxiously pursuing was granted to him; and in March, 1783, during the administration of Lord Shelburne, he was appointed a judge of the supreme court of judicature at Fort William, in Bengal, on which occasion he was knighted, and soon afterwards married Miss Shipley, the eldest daughter of his friend the Bishop of St. Asaph. This long-desired appointment he owed principally to the offices of Lord Ashburton, who communicated the intelligence of it in the following letter: —

"It is with little less satisfaction to myself than it can give you, that I send you the enclosed; and I do assure you, there are few events in which I could have felt so sensible a mortification as in that of your finally missing this favourite object. The weather suggests to me, as no slight topic of congratulation, your being relieved from

such a journey, and under such circumstances as your last favour intimates you had in contemplation for Wednesday; but when I consider this appointment as securing to you at once two of the first objects of human pursuit, those of ambition and love, I feel it a subject of very serious and cordial congratulation, which I desire you to accept and to convey accordingly."

This appointment prevented the completion of several professional works which Sir William Jones had projected, amongst which was a treatise on maritime contracts and a new translation of Littleton's Tenures, with a commentary and an introductory discourse on the laws of England.

In the month of April, 1783, Sir William Jones embarked for India, and on the voyage addressed a letter to Lord Ashburton, conveying the expression of his gratitude for the services which that nobleman had rendered him. "As to you, my dear lord, we consider you as the spring and fountain of our happiness, as the author and parent (a Roman would have added, what the coldness of our northern language will hardly admit), the *god* of our fortunes. It is possible, indeed, that, by incessant labour and irksome attendance at the bar, I might in due time have attained all that my limited ambition could aspire to; but in no other station than that which I owe to your friendship could I have gratified at once my boundless curiosity concerning the people of the East, continued the exercise of my profession, in which I sincerely delight, and enjoyed at the same time the comforts of domestic life. The grand jury of the county of Denbigh have found, I understand, the bill against the Dean of St. Asaph, for publishing my dialogue; but as an indictment for a theoretical essay on government was, I believe, never before known, I have no apprehension for the consequences. As to the doctrines of the tract, though I shall certainly not preach them to the Indians, who must and will be governed by absolute power, yet I shall go through life with a persuasion that they are just and rational; that substantial

freedom is both the daughter and parent of virtue, and that virtue is the only source of public and private felicity."

In December, 1783, Sir William Jones entered on the discharge of his judicial functions, and delivered his first charge to the grand jury. "The public," says his biographer, "had formed a high estimate of his oratorical powers; nor were they disappointed. His address was elegant, concise, and appropriate; the exposition of his sentiments and principles was equally manly and conciliatory, and calculated to inspire general satisfaction, as the known sincerity of his character was a test of his adherence to his professions. In glancing at dissensions which at no remote period had unfortunately prevailed between the supreme executive and judicial powers in Bengal, he showed that they might and ought to be avoided; that the functions of both were distinct, and could be exercised, without danger of collision, in promoting what should be the object of both, the public good."

Soon after his arrival in India, Sir William Jones began to feel the effects of the climate. In a letter addressed to Dr. Patrick Russell in March, 1784, he says, "I do not expect, as long as I stay in India, to be free from a bad digestion, the *morbus literatorum*, for which there is hardly any remedy but abstinence from too much food, literary and culinary. I rise before the sun, and bathe after a gentle ride; my diet is light and sparing, and I go early to rest; yet the activity of my mind is too strong for my constitution, though naturally not infirm, and I must be satisfied with a valetudinarian state of health."

The judicial life of Sir William Jones in India affords very little incident to the biographer. The time which was not devoted to the performance of his official duties was for the most part consumed in oriental studies. In particular he was desirous of rendering himself a proficient in the science of Sanscrit and Hindu law, so essential to the due administration of justice in India.

With a view also of encouraging a taste for oriental literature, he projected soon after his arrival the scheme of the Asiatic Society, of which he was constituted the first president. So great was his devotion to his literary pursuits, that he partially relinquished the usual relaxations of society, in order to afford himself more frequent opportunities of applying to his favourite studies. Among the various projects which occupied his mind during his residence in India, was the magnificent design of a Digest of Hindu and Mahommedan laws, on the model of Justinian; a design which he submitted in a letter, admirably explanatory of the subject, to the governor-general, Lord Cornwallis. Of this highly important and difficult work, when completed by the labours of native lawyers, he offered himself as the translator; and the Digest having been commenced in 1788, he devoted nearly the whole of his leisure hours to its advancement.

In the year 1790 it appears that some offer was made to him with regard to the augmentation of his salary. In a letter addressed to Sir J. Macpherson he says, "I give you hearty thanks for your postscript, which (as you enjoin secrecy) I will only allude to ambiguously, lest this letter should fall into other hands than yours. Be assured, that what I am going to say does not proceed from an imperfect sense of your kindness; but really I want no addition to my fortune, which is enough for me; and if the whole legislature of Britain were to offer me a station different from that which I now fill, I should most gratefully and respectfully decline it. The character of an ambitious judge is, in my opinion, very dangerous to public justice; and, if I were a sole legislator, it should be enacted that every judge, as well as every bishop, should remain for life in the place which he first accepted. This is not the language of a cynic, but of a man who loves his friends, his country, and mankind; who knows the short duration of human life; recollects that he has lived four and forty years, and has learned to be contented. Of public affairs you will

receive better intelligence than I am able to give you. My private life is similar to that which you remember: seven hours a day, on an average, are occupied by my duties as a magistrate, and one hour to the New Indian Digest: for one hour in the evening I read aloud to Lady Jones. We are now travelling to the sources of the Nile with Mr. Bruce, whose work is very interesting and important. The second volume of the Asiatic Transactions is printing, and the third ready for the press. I jabber Sanscrit every day with the pundits; and hope before I leave India to understand it as well as I do Latin."

In December, 1793, Lady Jones, whose health had suffered very severely from her residence in the East, embarked for Europe; and it was the intention of Sir William to follow her at the commencement of the year 1795, though he was fearful that he might be detained by his great task of the Digest of the Indian Laws. In the mean time he gave to the public, in the beginning of 1794, a translation of the Ordinances of Menu, comprising the Indian system of duties, religious and civil, which was considered as an institute of Hindu law prefatory to the more copious Digest. He still laboured with great assiduity at the latter work; but in consequence of the absence of Lady Jones he devoted a greater portion of his leisure hours to general society.

It is probable that if his life had been spared it would have been devoted to that studious retirement, to which, in the latter years of his life, when the ardour of his youthful ambition had somewhat subsided, he seems to have looked forward with a longing desire. In a letter written in 1791, and addressed to Sir Joseph Bankes, he says, "The last twenty years of my life I shall spend I trust in a studious retreat; and if you know of a pleasant country house in your part of Middlesex, with pasture-ground for my cattle, and garden-ground enough for my amusement, have the goodness to inform me of it. I shall be happy in being your neighbour; and though I write little now, will talk then as much as you please."

But his brilliant and useful life was rapidly approaching its termination. One evening, in the month of April, 1794, after incautiously remaining in conversation till a late hour in the open air, he called upon Lord Teignmouth, and complained of aguish symptoms. Those symptoms, in fact, indicated the existence of a complaint common in Bengal,—an inflammation of the liver. Two or three days afterwards a physician was called in; but it was too late; and the disorder, which was unusually rapid, terminated fatally on the 27th April. "On the morning of that day," says Lord Teignmouth, "his attendants, alarmed at the evident symptoms of approaching dissolution, came precipitately to call the friend who has now the melancholy task of recording the mournful event. Not a moment was lost in repairing to his house. He was lying on his bed in a posture of meditation, and the only symptom of remaining life was a small degree of motion in the heart, which, after a few seconds, ceased, and he expired without a pang or groan. His bodily suffering, from the complacency of his features and the ease of his attitude, could not have been severe; and his mind must have derived consolation from those sources where he had been in the habit of seeking it, and where alone, in our last moments, it can ever be found."

It is much to be regretted that we so rarely find genius and learning united with practical good sense and with a knowledge of the world. "It unfortunately happens," says an enlightened writer*, "that the same turn of mind which is favourable to philosophical pursuits, unless it be kept under proper regulation, is extremely apt to disqualify us for applying our knowledge to use, in the exercise of the arts, and in the conduct of affairs." Yet these antagonist qualities were so happily blended in the mind of Sir William Jones, that he was no less remarkable for his discretion, his aptitude for business, and his worldly success, than for his astonishing proficiency as a scholar, and for his productions as a man of genius. His knowledge was extensive, various,

* Dugald Stewart.

and accurate to a degree which has rarely been equalled. As the keys to the literary treasures of other countries, he applied himself, very early in life, to the acquisition of foreign languages with an assiduity and success which excited the wonder and admiration of his contemporaries. He made himself acquainted critically with eight languages,—English, Latin, French, Italian, Greek, Arabic, Persian, and Sanscrit. Eight were studied less perfectly, but were intelligible to him with the assistance of a dictionary—Spanish, Portuguese, German, Runic, Hebrew, Bengali, Hindu, and Turkish; and on twelve more he had bestowed considerable attention—Tibetian, Pali, Phalavi, Deri, Russian, Syriac, Ethiopic, Coptic, Welsh, Swedish, Dutch, and Chinese. His skill in several of these languages he has attested by the excellent translations which he at various times gave to the world. But to have confined the powers of his active and enlightened mind to the acquisition of that which is merely the symbol of ideas—the casket in which the rich treasures of intellect are contained — would have been unworthy of his genius. He applied himself sedulously to the acquisition of true knowledge; and from the doctrines of philosophy, the records of history, and the teachings of science, derived those higher lessons which regulated his useful and beautiful life. To enumerate the various branches of literature and science in which he excelled, hardly comes within the scope of the present memoir, the chief design of which is to record his professional history.

If an explanation of the means by which he accomplished these extraordinary intellectual labours is sought for, it may be found in that persevering industry which was so distinguishing a feature of his character, and in the early adoption of the invaluable maxim, *that whatever had been attained was attainable by him.* "It was," says his biographer, "a fixed principle with him, from which he never voluntarily deviated, not to be deterred by any difficulties that were surmountable from prosecuting to a successful termination what he

had once deliberately undertaken." This magnanimous confidence in the success of virtuous exertion is the root of greatness. "There is nothing in the world," says Burke, "truly beneficial, that does not lie within the reach of an informed understanding and a well-directed pursuit. There is nothing that God has judged good for us, that he has not given us the means to accomplish, both in the natural and the moral world." *

The professional acquirements of Sir William Jones were undoubtedly of a very high order. He commenced the study of the law at a later period of life than is usual; and he brought with him to the task powers of mind polished to the finest brilliancy by unremitting exercise, and tempered and proved in a variety of pursuits. With these advantages, he applied himself to the study of his profession as to that of a science, resting upon principles, and to be mastered, like other sciences, by an exact and orderly method. His Essay on the Law of Bailments affords an instance of the logical manner in which his mind was accustomed to deal with legal subjects; and it has been already stated that he had treated several other branches of the law upon the same model. His acquaintance with legal writers was doubtless very extensive; and his admirable memory enabled him to preserve the greater portion of whatever he perused. As a judge his character stood stainless and unreproached. "The inflexible integrity," says his biographer, "with which he discharged the solemn duty of this station will long be remembered in Calcutta both by Europeans and natives. So cautious was he to guard the independence of his character from any possibility of violation or imputation, that no solicitation could prevail upon him to use his personal influence with the members of administration in India to advance the private interests of friends whom he esteemed, and which he would have been happy to promote. He knew the dignity and felt the importance of his office, and, convinced that none could afford him more

* Speeches, vol. ii. p. 86.

ample scope for exerting his talents for the benefit of mankind, his ambition never extended beyond it. No circumstance occasioned his death to be more lamented by the public than the loss of his abilities as judge, of which they had had the experience of eleven years."

In all the relations of private life Sir William Jones was truly amiable and excellent, securing the respect and winning the affection of all who were fortunate enough to enjoy his intimacy. Amongst these were many of the most distinguished men of his day, one of whom, the friend of his childhood, has drawn in three lines his beautiful and exemplary character. "To exquisite taste, and learning quite unparalleled," says Dr. Parr, "Sir William Jones is known to have united the most benevolent temper and the purest morals."*

But the crowning virtue of Sir William Jones's character was his pure and ardent desire to benefit mankind. To this shrine he carried all the rich offerings of his taste, his learning, and his genius. In this great ambition every meaner passion was forgotten. He loved knowledge with that wise love which teaches us that it is the means only, and not the end,—the means of laying open to man the sources of his true happiness,—virtue, and freedom, and truth, and honour. Unconnected with the interests of his fellow-creatures, he knew no ambition. To him power had lost its evil allurements, and riches their debasing influence; and he so justly estimated the value of fame, as to regard it only when it echoed back the voice of his own pure and uncorrupted conscience. It is the interest as well as the duty of mankind to bestow upon characters like his the full measure of their grateful applause. The world has too long lavished upon its enemies the praises due to those who have truly and faithfully served it; and it is fitting that the gratitude of mankind should be at length directed to their real benefactors,—to those who, opening to them the gates of knowledge, and guarding for them the strongholds of liberty, find their noblest ambition gratified in the divine office of doing good.

* Character of Fox, vol. ii. p. 683.

LORD ERSKINE.

1750—1823.

The Honourable Thomas Erskine, the third and youngest son of Henry David, tenth Earl of Buchan, in Scotland, was born in Scotland, in the year 1750. At a very early age he selected the navy as his profession, for which he is said to have manifested a decided predilection, and went to sea with Sir John Lindsay, the nephew of the celebrated Lord Mansfield. He did not remain in the service a sufficient period to obtain a commission of lieutenant, though, by the friendship of his commander, he acted for some time in that capacity. In the eighteenth year of his age, having few hopes of promotion in the naval service, he entered the army as an ensign in the Royals, or first regiment of foot, and immediately afterwards accompanied his regiment to Minorca, where he remained three years. At this early period of his life, while labouring under the inconveniences of a very restricted fortune, he yet ventured, with that want of forethought which was unhappily a distinguishing feature of his private conduct, to unite himself to a young lady, who accompanied him to Minorca. In the year 1772, on his return from that island, he appears to have resided for some time in London, where the brilliancy of his talents speedily made him known in society. Amongst the distinguished persons who assembled at the house of Mrs. Montague, where Dr. Johnson, Sir Joshua Reynolds, the Bishop of St. Asaph, Dr. Burney, and others of the most celebrated scholars of the day, were in the habit of meeting, Mr. Erskine was not unfrequently seen.* "He talked," says Boswell, who met him in society at this time, "with a vivacity, fluency, and precision so uncommon,

* Wraxall's Memoirs, vol. i. p. 152.

that he attracted particular attention."* "He told us," adds the biographer, "that, when he was in Minorca, he not only read prayers, but preached two sermons to the regiment."

Of the motives which first led Mr. Erskine to the study of the law little is known; but it has been said that he was induced by the advice of his mother, a lady of uncommon acquirements and great penetration, to relinquish his commission, and to enter his name on the books of Lincoln's Inn. At the same time he also became a fellow-commoner of Trinity college, Cambridge, where one of his declamations, the subject of which is the Revolution of 1688, is still extant, and is said to display in some of its passages the traces of that eloquence by which he was subsequently so much distinguished. In his speech on the trial of Paine, for the publication of the second part of the Rights of Man, Mr. Erskine mentions with complacency this youthful effort. "I was formerly called upon, under the discipline of a college, to maintain these truths, and was rewarded for being thought to have successfully maintained that our present constitution was by no means a remnant of Saxon liberty, nor any other institution of liberty, but the pure consequence of the oppression of the Norman tenures, which spreading the spirit of freedom from one end of the kingdom to another, enabled our brave fathers, inch by inch, not to reconquer, *but for the first time to obtain* those privileges which are the inalienable inheritance of all mankind."

The object of Mr. Erskine in becoming a member of the university was, that by taking the degree to which, as the son of a nobleman, he was entitled, he might save the term of two years, during which his name must otherwise have remained on the books of Lincoln's Inn. He did not therefore apply himself to the usual course of academical study, but devoted his time to the acquisition of the learning essential to his new profession, in the chambers of Mr. Buller, one of the most eminent

* Life of Johnson, vol. ii. p. 170. ed. 1799.

special pleaders of that day. While thus studying the rudiments of the law, Mr. Erskine is said to have exhibited much diligence; and on the promotion of Mr. Buller to the bench, he became a pupil of Mr. Wood, of whose instructions he availed himself for some time after he was called to the bar, an event which took place in Trinity term, 1778.

By a happy accident, the genius of Erskine was not doomed to languish in that obscurity which so generally involves the early fortunes of those who devote themselves to his profession. Captain Baillie, the lieutenant-governor of Greenwich hospital, having observed various abuses in the administration of that charity, presented several petitions to the directors, the governors, and, lastly, to the lords of the admiralty, praying for enquiry and redress. Not being successful in his object, he printed a statement of the case, and distributed it amongst the general governors of the hospital. In this paper he animadverted with much severity on the introduction of landsmen into the hospital, insinuating that they had been placed there to serve the election purposes of Lord Sandwich, the first lord of the admiralty. On the circulation of this pamphlet, Captain Baillie was suspended by the directions of the admiralty, and certain of the officers of the establishment, whose conduct had been the subject of his remarks, applied, in Trinity term, 1778, to the court of king's bench, for a criminal information. Amongst the counsel employed by Captain Baillie to show cause against this rule was Mr. Erskine, with whom he had become accidentally acquainted, and who had only been called to the bar in the same term in which the rule for the information had been granted. On the 23d of November, cause was shown against the rule by Captain Baillie's leading counsel, and on the following day Mr. Erskine addressed to the court, from one of the back benches, that animated and brilliant argument which at once established his reputation,—a reputation without an equal in the annals of English forensic eloquence. The speech was as remarkable for the judgment it dis-

played in the selection of the topics, and for the orderly method of its arrangement, as for the energy of its language, and the tone of high feeling by which it was characterised. In reviewing it, it seems almost incredible that it should have been the first effort of the speaker. Perhaps the most striking and forcible part of it is that in which Mr. Erskine denounces those who had ventured to come forward in the character of prosecutors.

"In this enumeration of delinquents, the Reverend Mr. —— looks round, as if he thought I had forgotten him. He is mistaken; I well remember him: but his infamy is worn threadbare. Mr. Murphy has already treated him with that ridicule which his folly, and Mr. Peckham with that invective which his wickedness, deserves. I shall therefore forbear to taint the ear of the court further with his name,—a name which would bring dishonour upon his country and its religion, if human nature were not happily compelled to bear the greater part of the disgrace, and to share it amongst mankind."

After stating that the seamen of the hospital, grateful for the exertions of Captain Baillie in their favour, had surrounded his apartments, and testified their feelings by acclamations, "which sailors never bestow but on men who deserve them," Mr. Erskine proceeded in that strain of excited language and sentiment, which, when skilfully applied, seldom fails to carry with it the passions of the hearers. "This simple and honest tribute was the signal for all that has followed. The leader of these unfortunate people was turned out of office; and the affidavit of Charles Smith is filed in court, which, I thank my God, I have not been able to read without tears; how, indeed, could any man, when he swears that for this cause alone his place was taken from him: that he received his dismission when languishing with sickness in the infirmary, the consequence of which was, that his unfortunate wife and several of his helpless innocent children died in want and misery, *the woman actually expiring at the gates of the hospital?* That such wretches should escape chains

and a dungeon is a reproach to humanity, and to all order and government; but that they should become *prosecutors* is a degree of effrontery that would not be believed by any man who did not accustom himself to observe the shameless scenes which the monstrous age we live in is every day producing."

But the man whom Mr. Erskine considered the grand offender still remained untouched. At length, towards the conclusion of his speech, though that person did not stand forwards as a party to the proceeding, Mr. Erskine ventured to name him. "Indeed, Lord Sandwich has, in my mind, acted such a part——"

He was here interrupted by Lord Mansfield, who desired him to observe that Lord Sandwich was not before the court.

"I know," resumed Mr. Erskine, "that he is not before the court; but for that very reason *I will bring him before the court.* He has placed these men in the front of the battle, in hopes to escape under their shelter, but I will not join in battle with *them: their* vices, though screwed up to the highest pitch of human depravity, are not of dignity enough to vindicate the combat with *me.* I assert that the Earl of Sandwich has but one road to escape out of this business without pollution and disgrace; and that is, by publicly disavowing the acts of the prosecutors, and restoring Captain Baillie to his command. If he does this, then his offence will be no more than the too common one of having suffered his own personal interests to prevail over his public duty, in placing his voters in the hospital. But if, on the contrary, he continues to protect the prosecutors, in spite of the evidence of their guilt, which has excited the abhorrence of the numerous audience that crowd this court; if he keeps this injured man suspended, or dares to turn that suspension into a removal, I shall then not scruple to declare him an accomplice in their guilt, a shameless oppressor, a disgrace to his rank, and a traitor to his trust."

At the conclusion of his address, Mr. Erskine broke

out into an impassioned panegyric on his client's conduct. "FINE AND IMPRISONMENT! The man deserves a palace instead of a prison, who prevents the palace built by the bounty of his country from being converted into a dungeon, and who sacrifices his own security to the interests of humanity and virtue."

In the course of the year 1779 Mr. Erskine was employed as one of the counsel for Admiral Keppel, at the suggestion, it is said, of Mr. Dunning, who, finding himself embarrassed by his ignorance of nautical phrases and affairs, was desirous of availing himself of the superior technical information of Mr. Erskine.

In the spring of 1779 the reputation of Mr. Erskine was further advanced by the delivery, at the bar of the commons, of a speech on a subject closely connected with the interests of literature. From the reign of James I. the stationers' company and the universities of Oxford and Cambridge had claimed, under a grant from the crown, the exclusive right of printing almanacks, until at length Mr. Carnan, a bookseller in St. Paul's Churchyard, resolving to dispute the legality of this monopoly, published a variety of almanacks, which, in consequence of their superiority over the prerogative editions, obtained an extensive circulation. Legal proceedings were immediately instituted; but ultimately the court of exchequer decided that the grant from the crown could not be sustained. In consequence of this decision, the prime minister, Lord North, at that time chancellor of the university of Cambridge, introduced a bill into parliament, to vest the right in the parties who had so long usurped it; upon which Mr. Carnan petitioned to be heard against the bill at the bar of the commons, where Mr. Erskine appeared as his advocate. Although, perhaps, in the strict line of his duty, he would have been confined to the arguments immediately arising from his client's situation, he took a higher ground, and contended with great ability and eloquence against the principle of the proposed measure, pointing out the impolicy, and enlarging upon the injustice, of fettering, in any particular, the freedom

of the press, for the individual benefit of any body of men. Notwithstanding the strong interest which the bill possessed in the support of the minister and of the members for the universities, it was rejected by a majority of forty-five votes, immediately on Mr. Erskine's retiring from the bar. It has been mentioned, as a circumstance much to the credit of the then Lord Elliott, the brother-in-law of Lord North, that though he came, at the desire of his noble relative, from Cornwall, to support the bill, yet, having heard Mr. Erskine's speech, he divided against it, saying publicly in the lobby, that he found it impossible to vote otherwise. *

But, signal as had been the success which attended his exertions, the extraordinary powers of Mr. Erskine's eloquence had not yet been fully developed. He had not hitherto enjoyed the opportunity, in any important case, of addressing to the feelings of a jury that fine union of argument and passion which constituted the character of his oratory. A noble occasion, which might seem expressly designed for the display of his peculiar powers, soon occurred in the trial of Lord George Gordon for high treason. That young nobleman, as it is well known, having been elected the president of the Protestant Association, proceeded, at the head of upwards of forty thousand persons, to the house of commons, to present the petition of the associated protestants. This meeting was unfortunately the origin of the fatal riots which for so many days desolated the metropolis, and shook for a time even the foundations of the government. Shocked at these outrages, Lord George Gordon tendered his services to suppress them, and accompanied the sheriff of London into the city for that purpose; but, notwithstanding this disavowal of any illegal intent, he was afterwards committed to the Tower, and indicted for high treason, in levying war against the king. The trial took place on the 5th February, 1781, when Mr. Kenyon and Mr. Erskine appeared as counsel for the prisoner. The evidence for the crown having been concluded, Mr.

* Parl. Hist. vol. xx. p. 621. (note.)

Kenyon, as senior counsel for Lord George, addressed the jury, and, according to the usual course, would have been followed by his junior, Mr. Erskine. He, however, insisted upon reserving his address till the conclusion of the evidence on both sides, which, he said, was matter of great privilege to the prisoner, and for which, he stated, there was a precedent, the authority of which he should insist upon for his client. This being assented to, the witnesses for the defence were examined, and at the close of that evidence, about midnight, Mr. Erskine rose, and addressed to the jury a speech, which, in powerful argument, animated oratory, and successful effect, has, perhaps, never been equalled in this country. After a most argumentative and energetic attack on the dangerous doctrine of constructive treason, he applied himself to the evidence in a manner so singularly skilful, judicious, and masterly, that even in reading the speech, deprived of all the powerful auxiliaries of the presence, the voice, and the action of the speaker, the reader is irresistibly impelled to regard the prisoner as a man, who, whatever might have been his imprudence, stood, in heart and intention, wholly free from offence. The two leading principles, which pervaded the speech, were the unconstitutional nature of the doctrine of constructive treason, and the blameless intentions of the prisoner; and to the enforcing of these two arguments the whole of the speaker's powers were, with the most skilful art, directed. Satisfied that on the establishment of these arguments his client's acquittal would necessarily follow, the advocate never for a single instant lost sight of them, but to their enforcement and illustration devoted every effort of his art.

At the conclusion of his argument against constructive treason, Mr. Erskine thus pledged his individual character for the correctness of the views which he had expounded. "Gentlemen, you have now heard the law of treason; first in the abstract, and, secondly, as it applies to the general features of the case; and you have heard it with as much sincerity as if I had addressed you upon

my oath from the bench where the judges sit. I declare to you solemnly, in the presence of that Great Being, at whose bar we must all hereafter appear, that I have used no one art of an advocate, but have acted the plain unaffected part of a Christian man, instructing the consciences of his fellow-men to do justice. If I have deceived you on the subject, I am myself deceived; and if I am misled through ignorance, my ignorance is incurable, for I have spared no pains to understand it. I am not stiff in my opinions; but before I change any one of those which I have given you to-day, I must see some direct monument of justice that contradicts them, for the law of England pays no respect to theories, however ingenious, or to authors, however wise; and therefore, unless you hear me refuted by a series of direct precedents, and not by vague doctrines, if you wish to sleep in peace, *follow me!*"

In observing upon the evidence, Mr. Erskine occasionally broke out into a vehemence of expression which almost seems to overstep the bounds of good taste and discretion; but no advocate was ever less likely to be betrayed into an exhibition of passion which the jury could not share with him; and there is no doubt, that in these instances their minds were fully prepared for the reception of those passages, which in the coolness of the closet almost bear a character of extravagance. In arguing upon the construction of certain words attributed to Lord George Gordon, Mr. Erskine exclaimed — "But this I will say, that he must be a *ruffian*, and not a lawyer, who would dare to tell an English jury, that such ambiguous words, hemmed closely in between others not only innocent but meritorious, are to be adopted to constitute guilt, by rejecting both introduction and sequel, with which they are absolutely irreconcileable and inconsistent." And again, after noticing the offer of the prisoner to government to assist in the quelling of the disturbances, he ventured upon the following bold and extraordinary sentence: — "I say, by God, that man is a ruffian, who shall, after this, presume to

build upon such honest, artless conduct as an evidence of guilt." By those who witnessed and felt this singular experiment upon the feelings of the jury, it is said to have been completely successful. "I may now, therefore, relieve you," said Mr. Erskine, in conclusion, "from the pain of hearing me any longer, and be myself relieved from speaking on a subject which agitates and distresses me. Since Lord George Gordon stands clear of every hostile act or purpose against the legislature of his country, or the properties of his fellow-subjects; since the whole tenor of his conduct repels the belief of the traitorous intention charged by the indictment, my task is finished. I shall make no address to your passions: I will not remind you of the long and rigorous confinement he has suffered: I will not speak to you of his great youth, of his illustrious birth, and of his uniformly animated and generous zeal in parliament for the constitution of his country. Such topics might be useful in the balance of a doubtful case, yet even then I should have trusted to the honest hearts of Englishmen to have felt them without excitation. At present, the plain and rigid rules of justice and truth are sufficient to entitle him to your verdict."

The solicitor-general having replied, and Lord Mansfield having summed up, the jury retired to deliberate, and about three in the morning returned into court, and delivered a verdict of "Not guilty."

So rapidly did the reputation and practice of Mr. Erskine increase, that, on the suggestion of Lord Mansfield, as it is said, it was thought proper, in the year 1783, when he had scarcely been five years at the bar, to confer upon him a patent of precedence.

Talents so extraordinary and eloquence so powerful as Mr. Erskine's, are, in this country, speedily engaged in the public service. His political predilections had already led him to associate himself with those celebrated men, who, during the administration of Lord North, headed the opposition, and whose characters and genius were then in their highest meridian. Fox, Burke, and

Sheridan, the three most splendid names in the modern political history of England, had hitherto preserved unblemished the fair and brilliant reputation with which they entered into public life. The "coalition" had not yet dimmed the splendour of Fox's name; the purity of Burke's principles had not yet departed from him; nor had the fatal web of pecuniary embarrassment been wound round the soul of Sheridan. To associate with men like these was worthy of Erskine; but it was not until after the formation of the coalition ministry that he became the public coadjutor of this distinguished phalanx. When the ill-judged and unfortunate measure of the India bill had been introduced, it became evident that ministers would require every assistance to carry it, opposed as it was by so many and such various interests. The fame and the genius of Erskine at once pointed him out as an invaluable ally; and it was determined to bring him without delay into the house of commons. Sir William Gordon, the member for Portsmouth, was therefore prevailed upon, for an adequate consideration, to resign his seat, to which Mr. Erskine immediately succeeded.

It has not unfrequently happened, that men of the most distinguished reputation at the bar, when introduced into the house of commons, have failed to realise the high expectations of their admirers. Such appears to have been the case with regard to Mr. Erskine, who never acquired any considerable accession of fame by his parliamentary exertions. His first speech was delivered during the debate on the first reading of the East India bill *, and, as reported, bears few marks of those extraordinary talents which distinguished his forensic efforts. The opinion of a person, opposed in principle to Mr. Erskine, who was at that time a member of the house, and who heard the speech, has been preserved. "Mr. Erskine, who, like Mr. Scott, has since attained to the highest honours and dignities of the bar, first spoke as a member of the house of commons in support of this obnoxious measure. His enemies pronounced the perform-

* Parl. Hist. vol. xxiii. p. 1245.

ance tame, and destitute of the animation which so powerfully characterised his speeches in Westminster-hall. They maintained, that, however resplendent he appeared as an advocate while addressing a jury, he fell to the level of an ordinary man, if not below it, when seated on the ministerial bench, where another species of oratory was demanded to impress conviction or to extort admiration. To me, who, having never witnessed his jurisprudential talents, could not make any such comparison, he appeared to exhibit shining powers of declamation." * On the second reading of the India bill, Mr. Erskine spoke at greater length, and concluded with calling on Mr. Fox to persevere in the measure. "Let my right honourable friend," said he, "go on with firmness, and risk his office at every step he takes, and I will combat, as I now do, by his side, at the hazard of every prospect of ambition. Let him stand upon his own manly, superior understanding, and the integrity of his heart, which I know is ever ready to guide him in the course of his duty, and I will stand for ever by him, and be ready to sink with him in his fall." †

Mr. Fox did proceed, risked his office, and lost it; and in the struggles which subsequently took place, Mr. Erskine redeemed his promise of faithfully combating by the side of his leader. The India bill having been rejected in the house of lords, the king ventured to dismiss the ministry, notwithstanding their influence in the commons. Though driven from office, Mr. Fox still continued to command the house of commons, and a dissolution was consequently expected. The administration had been broken up on the 18th of December, and on the following day Mr. Erskine moved an address to the king, praying that his majesty would be pleased not to dissolve his parliament, a motion to which the house agreed. ‡ After a short adjournment, Mr. Fox brought forwards a motion on the state of the nation, in which he was ably supported by Mr. Erskine §, who

* Wraxall's Memoirs, vol. ii. p. 436.
† Parl. Hist. vol. xxiv. p. 1297.
‡ Id. vol. xxv. p. 239.
§ Id. p. 272.

made a fierce attack upon the new minister, and upon that secret influence by which the crown had been swayed. On a subsequent day * he repeated his attack upon Mr. Pitt, ridiculing his junction with Lord Gower and Lord Thurlow. "He said it was an affront to human reason to say that it was inconsistent for the right honourable gentleman to act in concert with the noble lord in the blue riband (Lord North), who was yet in close contact with the more learned Lord Thurlow and the Lord Gower. Though, perhaps, the right honourable gentleman might say that he had arrayed himself with the two last lords, to give the more certain effect to his plan for the reform in the representation of the people; and that, as that great object was the ruling feature of his political life, he had agreed to overlook all lesser differences, to secure that hearty and cordial union which the notorious opinions of these noble persons would be sure to afford him in the cabinet (*Laughter*)." In the course of the same session, Mr. Erskine opposed Mr. Pitt's India bill, on the second reading.†

In the year 1784 Mr. Erskine was called upon to defend the Dean of St. Asaph, who had been indicted for publishing the "Dialogue between a Gentleman and a Farmer," written by Sir William Jones, as already stated in the memoir of that excellent man. ‡ The tract itself was a short and familiar exposition of the principles of government, illustrating, in a forcible manner, the right and duty of resistance, as recognised in the theory of the English constitution. For this publication, which the government declined to notice, an indictment was preferred against the dean, at the instigation of Mr. Fitzmaurice, brother of the late Marquis of Lansdowne, and the case ultimately came on for trial, at the summer assizes for Shrewsbury, in the year 1784. Here, as in the case of Lord George Gordon, Mr. Erskine rested his client's defence upon two great principles: first, that the jury had the right of pronouncing upon the tract, whether it was a libel or no libel; and, secondly, that the

* Parl. Hist. vol. xxv. p. 313. † Id. p. 402. ‡ Ante, p. 320.

publication of the tract by the defendant, without any criminal motive, but, on the contrary, with a sincere desire to benefit the country, could not be construed into a libellous publication. With great eloquence also he contended that the Dialogue recommended and enforced only the principles upon which the Revolution was founded, and which had been repeatedly asserted and recognised by all our most celebrated constitutional writers.

At the commencement of his speech, Mr. Erskine identified himself in principle with the defendant in the following eloquent passage: — "This declaration of my own sentiments, even if my friend had not set me the example by giving you his, I should have considered to be my duty in this cause; for although, in ordinary cases, where the private right of the party accused is alone in discussion, and no general consequences can follow from the decision, the advocate and the private man ought in sound discretion to be kept asunder; yet there are occasions when such separation would be treachery and meanness. In a case where the dearest rights of society are involved in the resistance of a prosecution,—where the party accused is, as in this instance, a mere name, — where the whole community is wounded through his sides, — and where the conviction of the private individual is the subversion or surrender of public privileges,—the advocate has a more extensive charge;—the duty of the patriot citizen then mixes itself with his obligation to his client; and he disgraces himself, dishonours his profession, and betrays his country, if he does not step forth in his personal character, and vindicate the rights of all his fellow-citizens, which are attacked through the medium of the man he is defending. Gentlemen, I do not mean to shrink from that responsibility upon this occasion; I desire to be considered the fellow-criminal of the defendant, if by your verdict he should be found one, by publishing in advised speaking (which is substantially equal in guilt to the publication that he is accused of before you) my hearty approbation of every sentiment contained in this little book, promising

here, in the face of the world, to publish them upon every suitable occasion, amongst that part of the community within the reach of my precept, influence, and example. If there be any more prosecutors of this denomination abroad amongst us, they know how to take advantage of these declarations."

When Mr. Justice Buller, who presided at the trial, had summed up, the jury withdrew, and returned in about half an hour, with the verdict—"Guilty of publishing only." Upon this, a long and warm discussion ensued between the judge and Mr. Erskine, as to the mode in which the verdict should be taken.

"*Mr. Justice Buller.* You say he is guilty of publishing the pamphlet, and that the meaning of the innuendoes is as stated in the indictment?

"*A Juror.* Certainly.

"*Mr. Erskine.* Is the word *only* to stand as part of your verdict?

"*A Juror.* Certainly.

"*Mr. Erskine.* Then I insist it shall be recorded.

"*Mr. Justice Buller.* Then the verdict must be misunderstood. Let me understand the jury.

"*Mr. Erskine.* The jury do understand their verdict.

"*Mr. Justice Buller.* Sir, I will not be interrupted.

"*Mr. Erskine.* I stand here as an advocate for a brother-citizen, and I desire that the word *only* may be recorded.

"*Mr. Justice Buller.* Sit down, sir! Remember your duty, or I shall be obliged to proceed in another manner.

"*Mr. Erskine.* Your lordship may proceed in what manner you think fit. I know my duty as well as your lordship knows yours. I shall not alter my conduct."

Of this reply his lordship took no notice. Ultimately the verdict of the jury was, that the Dean was guilty of publishing, but whether it was a libel or not they did not find. In the following term Mr. Erskine obtained a rule for a new trial, on the ground of a misdirection of the learned judge, who had told the jury, that the matter for them to decide was, whether the defendant was guilty

of the *fact* or not; thus excluding from their consideration, according to the practice of the judges at that day, the question of the libellous tendency of the publication. In the course of the same term the rule came on to be argued, and was supported by Mr. Erskine in a speech, which, beyond all contest, displays the most perfect union of argument and eloquence ever exhibited in Westminster-hall. Such was the admiration with which Mr. Fox regarded this speech, that he repeatedly declared, he thought it the finest argument in the English language. * When the circumstances under which the speech was delivered are considered, it will appear, without doubt, to be the most extraordinary effort of Mr. Erskine's life. It was not directed to a jury whose prejudices, however strong, he might hope to shake; it was addressed to judges, whose minds he knew to be prepossessed so firmly against him as to preclude even the most distant expectation of success. It was addressed to Lord Mansfield, who had borne unmoved the bitter invectives of Junius on the same subject, and whose practice of nearly half a century had been in unwearied opposition to the doctrine. It was addressed also to Mr. Justice Buller, whose convictions had already been expressed in the strongest language. In making this appeal to the court, Mr. Erskine met with that most disheartening of all receptions, an indulgent indifference to what appeared to the judges a vain and injudicious attempt to remove the landmarks of the law. He has himself described, in his speech on the trial of Paine, the manner of his reception. "Before that late period, I ventured to maintain this very right of a jury over the question of libel under the same ancient constitution, (I do not mean before the noble judge now present, for the matter was gone to rest in the courts long before he came to sit where he does,) but before a noble and reverend magistrate, of the most exalted understanding, and of the most uncorrupted integrity. He treated me, not with contempt, indeed, for of that his nature was incapable, but he put me

* State Trials, vol. xxi. p. 971. (n.)

aside with indulgence, as you do a child when it is lisping its prattle out of season." Of the closely-knit arguments and the eloquent illustrations of this speech it is impossible, by extracting portions of it, to give any idea. The court answered it, as might have been expected, by a reference to their own practice and to that of their immediate predecessors, leaving untouched the many sound, admirable, and unanswerable arguments with which it abounded. "Such a judicial practice," said Lord Mansfield, "on the precise point, from the Revolution, as I think, down to the present day, is not to be shaken by arguments of general theory or popular declamation."

But it *was* shaken, and to its foundations, by the popular declamation upon which the chief justice set so light a price. It was the consciousness of this which supported Mr. Erskine through his despised and ungrateful office. He knew, that in offering his arguments to the unwilling ears of the judges, he was at the same time addressing them to the lively and just apprehension of the people of England, who would not endure that the freedom of the press should be thus violated, and deprived of its best protection — the trial by jury. The speech of Mr. Erskine, without doubt, prepared the way for the introduction of Mr. Fox's libel bill, which has *declared* the despised opinion of Mr. Erskine to be the law. In his own words, — "If this be not an awful lesson of caution respecting opinions, where are such lessons to be read?"

The political situation and connections of Mr. Erskine occasionally brought him, about this period, into the society of the Prince of Wales, who appears to have been warmly attached to him; and, on the establishment of his household, bestowed upon him the appointment of his attorney-general. During the king's illness, in 1788, and the negotiations for a formation of a Whig ministry under the auspices of the prince, as regent, Mr. Erskine was to have exchanged this office for that of attorney-general to the king.* But the speedy recovery of the sovereign terminated the whole project.

* New Annual Register for 1789, p. 93.

The speech delivered by Mr. Erskine, in 1789, on the trial of Stockdale for a libel reflecting on the house of commons, has been deemed by some persons the most exquisite specimen of his powers. It certainly exhibits in great perfection the grand characteristics of his oratory, —elevated sentiment, brilliant imagery, and passionate declamation, all resting upon that broad foundation of *principle* which has been noticed as invariably forming the groundwork of his speeches. In consequence of the publication of the articles of impeachment against Mr. Hastings, whilst the impeachment itself was pending, the Reverend Mr. Logan, a Scotch minister of talents and learning, composed a defence of Mr. Hastings, which was published by Mr. Stockdale in the regular course of his business. The pamphlet contained certain strong, and, as it was asserted, libellous observations on the proceedings of the commons, which were said to have proceeded "from motives of personal animosity, not from regard to public justice." With a jealousy of their reputation which might well have been spared, the house addressed a prayer to the king, that the attorney-general might be directed to file an information against the publisher of the libel, which, coming on for trial, Mr. Erskine appeared as the counsel for the defendant. A more favourable opportunity for the display of his brilliant talents could not well have occurred, and most successfully did he avail himself of it. The impregnable position in which he intrenched himself, the *principle* of his speech, was, that the alleged libel was a *bonâ fide* defence of Mr. Hastings; and to the establishment of this position the whole of his arguments were directed. By way of collaterally strengthening that position, he touched upon the general merits of Mr. Hastings' case, of which, had he not been himself a member of the commons, he would undoubtedly have been selected as the conductor. Of the splendid effort which the public would then have witnessed, we may form some idea from the passages in the present speech devoted to that subject.

The trial of Mr. Hastings at the bar of the lords

thus magnificently and picturesquely described by Mr. Erskine: — "There the most august and striking spectacle was daily exhibited that the world ever witnessed. A vast stage of justice was erected, awful from its high authority, splendid from its illustrious dignity, venerable for the learning and wisdom of its judges, captivating and affecting from the mighty concourse of all ranks and conditions which daily flocked into it as into a theatre of pleasure; there, when the whole public mind was at once awed and softened to the impression of every human affection, there appeared, day after day, one after another, men of the most powerful and exalted talents, eclipsing by their accusing eloquence the most boasted harangues of antiquity: — rousing the pride of national resentment, by the boldest invectives against broken faith and violated treaties, and shaking the bosom with alternate pity and horror, by the most glowing pictures of insulted nature and humanity: ever animated and energetic from the love of fame, which is the inherent passion of genius; firm and indefatigable from a strong prepossession of the justice of their cause."

"The accusing eloquence" of Burke and of Sheridan was hardly superior to the oratory of Erskine, in suggesting the only defence of which Mr. Hastings could successfully avail himself.

"Gentlemen of the jury, if this be a wilfully false account of the instructions given to Mr. Hastings for his government, and of his conduct under them, the author and publisher of this defence deserve the severest punishment, for a mercenary imposition on the public. But if it be true that he was directed to make the safety and prosperity of Bengal the first object of his attention, and that under his administration it has been safe and prosperous; if it be true that the security and preservation of our possessions and revenues in Asia were marked out to him as the great leading principle of his government, and that those possessions and revenues, amidst unexampled dangers, have been secured and preserved; then a question may be unaccountably mixed with your consideration,

much beyond the consequence of the present prosecution, involving perhaps the merit of the impeachment itself which gave it birth — a question which the commons, as prosecutors of Mr. Hastings, should in common prudence have avoided; unless, regretting the unwieldy length of their proceedings against him, they wished to afford him the opportunity of this strange anomalous defence. For although I am neither his counsel, nor desire to have any thing to do with his guilt or innocence, yet, in the collateral defence of my client, I am driven to state matter which may be considered by many as hostile to the impeachment. For if your dependencies have been secured, and their interests promoted, I am driven, in the defence of my client, to remark, that it is mad and preposterous to bring to the standard of justice and humanity the exercise of a dominion founded upon violence and terror. It may and must be true that Mr. Hastings has repeatedly offended against the rights and privileges of Asiatic government, if he was the faithful deputy of a power which could not maintain itself for an hour without trampling upon both;—he may and must have offended against the laws of God and nature, if he was the faithful viceroy of an empire wrested in blood from the people to whom God and nature had given it;—he may and must have preserved that unjust dominion over timorous and abject nations by a terrifying, overbearing, and insulting superiority, if he was the faithful administrator of your government, which, having no root in consent or affection, no foundation in similarity of interests, nor support from any one principle that cements men together in society, could only be upheld by alternate stratagem and force. The unhappy people of India, feeble and effeminate as they are from the softness of their climate, and subdued and broken as they have been by the knavery and strength of civilization, still occasionally start up in all the vigour and intelligence of insulted nature: — to be governed at all, they must be governed with a rod of iron; and our empire in the East would have been long since lost to Great Bri-

tain, if civil and military prowess had not united their efforts to support an authority, which Heaven never gave, by means which it never can sanction.

"Gentlemen, I think I can observe that you are touched with this way of considering the subject; and I can account for it. I have not been considering it through the cold medium of books, but have been speaking of man and his nature, and of human dominion, from what I have seen of them myself, amongst reluctant nations submitting to our authority. I know what they feel, and how such feelings can alone be repressed. I have heard them in my youth from a naked savage, in the indignant character of a prince surrounded by his subjects, addressing the governor of a British colony, holding a bundle of sticks as the notes of his unlettered eloquence. 'Who is it,' said the jealous ruler over the desert encroached upon by the restless foot of English adventurers, 'who is it that causes this river to rise in the high mountains, and to empty itself into the ocean? Who is it that causes to blow the loud winds of winter, and that calms them again in the summer? Who is it that rears up the shade of those lofty forests, and blasts them with the quick lightning at his pleasure? The same Being who gave to you a country on the other side of the waters, and gave ours to us: and by this title we will defend it,' said the warrior, throwing down his tomahawk upon the ground, and raising the war-sound of his nation. These are the feelings of subjugated men all round the globe; and, depend upon it, nothing but fear will control where it is vain to look for affection.

"These reflections are the only antidotes to those anathemas of superhuman eloquence which have lately shaken these walls which surround us; but which it unaccountably falls to my province, whether I will or no, a little to stem the torrent of, by reminding you that you have a mighty sway in Asia, which cannot be maintained by the finer sympathies of life, or the practice of its charities or affections. What will *they* do for you, when surrounded by two hundred thousand men, with

artillery, cavalry, and elephants, calling upon you for the dominions you have robbed them of? Justice may, no doubt, in such a case, forbid the levying of a fine to pay a revolting soldiery;—a treaty may stand in the way of increasing a tribute to keep up the very existence of the government;—and delicacy for women may forbid all entrance into a zenana for money, whatever may be the necessity for taking it. All these things must ever be occurring. But under the pressure of such constant difficulties, so dangerous to national honour, it might be better, perhaps, to think of effectually securing it altogether, by recalling our troops and our merchants, and abandoning our Asiatic empire. Until this be done neither religion nor philosophy can be pressed very far into the aid of reformation and punishment. If England, from a lust of ambition and dominion, will insist on maintaining despotic rule over distant and hostile nations, beyond all comparison more numerous and extended than herself, and gives commission to her viceroys to govern them, with no other instructions than to preserve them, and to secure permanently their revenues, with what colour or consistency of reason can she place herself in the moral chair, and affect to be shocked at the execution of her own orders, adverting to the exact measure of wickedness and injustice necessary to their execution, and complaining only of the *excess* as the immorality;—considering her authority as a dispensation for breaking the commands of God, and the breach of them as only punishable when contrary to the ordinances of man?

"Such a proceeding, gentlemen, begets serious reflections. It would be, perhaps, better for the masters and servants of all such governments to join in supplication that the great Author of violated humanity may not confound them together in one common judgment."

In defending the overcharged expressions of which the writer of the tract had made use, Mr. Erskine produced one of the most eloquent apologies for *excess* existing in our language.

"From minds thus subdued by the terrors of punishment there could issue no works of genius to expand the empire of human reason, nor any masterly compositions on the general nature of government, by the help of which the great commonwealths of mankind have founded their establishments; much less any of those useful applications of them to critical conjunctures, by which, from time to time, our own constitution, by the exertions of patriot citizens, has been brought back to its standard. Under such terrors all the great lights of science and civilization must be extinguished: for men cannot communicate their free thoughts to one another with a lash held over their heads. It is the nature of every thing that is great and useful, both in the animate and inanimate world, to be wild and irregular; and we must be contented to take them with the alloys which belong to them, or live without them. Genius breaks from the fetters of criticism; but its wanderings are sanctioned by its majesty and wisdom when it advances in its path: subject it to the critic, and you tame it into dulness. Mighty rivers break down their banks in the winter, sweeping to death the flocks which are fattened on the soil that they fertilize in the summer: the few may be saved by embankments from drowning, but the flock must perish for hunger. Tempests occasionally shake our dwellings and dissipate our commerce; but they scourge before them the lazy elements which without them would stagnate into pestilence. In like manner, Liberty herself, the last and best gift of God to his creatures, must be taken just as she is. You might pare her down into bashful regularity, and shape her into a perfect model of severe scrupulous law; but she would then be Liberty no longer: and you must be content to die under the lash of this inexorable justice, which you had exchanged for the banners of freedom."

The jury having withdrawn, after a consultation of about two hours, returned with a verdict of "Not guilty."

For several years Mr. Erskine had taken little interest in his parliamentary duties, probably from the very burthensome nature of his professional labours. But in the session of 1790 he again appeared as a speaker in the house, and delivered a very long argument on the abatement of impeachments by a dissolution.* In his first speech on this subject, after laying down what he termed the foundation of his argument at considerable length, he was proceeding to the consideration of the precedents, when, owing to his fatigues in the earlier part of the day, and to the intense heat of the house, he told the speaker that he was unable to pursue his argument.† He resumed it, however, on a subsequent evening.

Upon the motion made by Mr. Fox, in 1792, for the appointment of a minister to treat with the persons exercising the functions of the executive government in France, Mr. Erskine supported the motion with more energy and eloquence than were usually displayed in his parliamentary harangues. He painted in strong colours the fortunes of the soldier, and contrasted them with those of the persons who profited at home by the calamities of war. "The life of the modern soldier is ill represented by heroic fiction. War has means of destruction more formidable than the cannon and the sword. Of the thousands and tens of thousands that perished in our late contests with France and Spain, a very small part ever felt the stroke of an enemy; the rest languished in tents and ships, amidst damps and putrefaction—pale, torpid, spiritless, and helpless; gasping and groaning unpitied among men, made obdurate by long continuance of hopeless misery, and were at last whelmed into pits or heaved into the ocean without notice, without remembrance." . . . "But at the conclusion of a ten years' war how are we recompensed for the death of multitudes, and the expense of millions, but by contemplating the sudden glories of paymasters and agents, contractors and commissaries, whose equi-

* Cobbett's Parl. Deb. vol. xxviii. p. 1035. † Id. p. 1043.

pages shine like meteors, and whose palaces rise like exhalations? These are the men who, without virtue, labour, or hazard, are growing rich as their country is impoverished; they rejoice when obstinacy or ambition adds another year to slaughter and devastation; and laugh from their desks at bravery and science, while they are adding figure to figure, and cypher to cypher, hoping for a new contract from a new armament, and computing the profits of a siege or a tempest." *

In the course of the same session Mr. Erskine opposed the introduction of the traitorous correspondence bill †, and supported, at considerable length, Mr. (now Lord) Grey's motion in favour of parliamentary reform. ‡

It had hitherto been in general the good fortune of Mr. Erskine that his genius had been exerted in cases which a good man and even a prudent man might wish to defend; but in the year 1792 he was called upon to act as the advocate of one who, whatever may have been the integrity of his intentions, betrayed a grievous want of common sense and common decency in the expression of his opinions, and who by his writings cast more discredit on the cause of freedom than the pens of her most zealous enemies could have effected. In the second part of his celebrated Rights of Man, Thomas Paine attacked, in the most coarse and unmeasured language, the constitution and government of England, and an information was consequently filed against him, which came on to be tried in the year 1792. Mr. Erskine was retained for the defendant, at that period an odious and obnoxious duty, from which, however, with his characteristic magnanimity, he never for a moment attempted to withdraw himself. In the opening of his address to the jury he thus adverted to the calumnious reports which had been circulated on the subject: — "With regard to myself, every man within hearing at this moment, nay, the whole people of England, have been witnesses to the calumnious clamour that

* Parl. Hist. vol. xxx. p. 97. † Id. p. 588. ‡ Id. p. 826.

by every art has been raised and kept up against me. In every place where business or pleasure collects the public together, day after day my name and character have been the topics of injurious reflection. And for what? only for not having shrunk from the discharge of a duty, which no personal advantage recommended, and which a thousand difficulties repelled. But, gentlemen, I have no complaint to make either against the printers of these libels, or even against their authors. The greater part of them, hurried away perhaps by honest prejudices, may have believed they were serving their country, by rendering me the object of its suspicion and contempt; and if there have been amongst them others, who have mixed in it from personal malice and unkindness, I thank God, I can forgive them also. Little indeed did they know me, who thought that such calumnies would influence my conduct: I will for ever, at all hazards, assert the dignity, independence, and integrity of the ENGLISH BAR, without which impartial justice, the most valuable part of the English constitution, can have no existence. From the moment that any advocate can be permitted to say that he *will* or will *not* stand between the crown and the subject arraigned in the court where he daily sits to practise, from that moment the liberties of England are at an end. If the advocate refuses to defend, from what he may think of the charge or of the defence, he assumes the character of the judge, nay, he assumes it before the hour of judgment, and in proportion to his rank and reputation puts the heavy influence of perhaps a mistaken opinion into the scale against the accused, in whose favour the benevolent principle of the English law makes all presumptions, and which commands the very judge to be his counsel."

In meeting the difficulties of this extraordinary case, Mr. Erskine adopted the only course which was open to him with any chance of success. He rested the defence entirely on "the nature and extent of the liberty of the English press," striving, although vainly, with all the powers of his energetic mind, to bring his client's case

within the operation of this great principle. Distinguishing between the attempt to inculcate a resistance to government upon the minds of individuals, and the endeavour to impress *upon the community at large* whatever principles of government the party honestly entertains, he argued that to the latter instance the doctrine of the liberty of the press extended, and that the "Rights of Man" came within the protection of that doctrine. He developed perhaps more clearly in this than in any of his other speeches his own notions of the liberty of the press in the following words:—

"The proposition which I mean to maintain as the basis of the liberty of the press, and without which it is an empty sound, is this:—that every man not intending to mislead, but seeking to enlighten others with what his own reason and conscience, however erroneously, have dictated to him as truth, may address himself to the universal reason of a whole nation, either upon the subject of governments in general, or upon that of our own particular country; that he may analyse the principles of its constitution, point out its errors and defects, examine and publish its corruptions, and warn his fellow-citizens against their ruinous consequences, and exert his whole faculties in pointing out the most advantageous changes in establishments which he considers to be radically defective, or sliding from their object by abuse. All this every subject of this country has a right to do, if he contemplates only what he thinks would be for its advantage, and but seeks to change the public mind by the conviction that flows from reasonings dictated by conscience.

"If, indeed, he writes what he does not think; if, contemplating the misery of others, he wickedly condemns what his own understanding approves; or, even admitting his real disgust against the government or its corruptions, if he calumniates living magistrates, or holds out to individuals that they have a right to run before the public mind in their conduct; that they may oppose by contumacy or force what private reason only

disapproves; that they may disobey the law because their judgment only condemns it; or resist the public will, because they honestly wish to change it,—he is then a criminal upon every principle of rational policy, as well as upon the immemorial precedents of English justice; because such a person seeks to disunite individuals from their duty to the whole, and excites to overt acts of misconduct in a part of the community, instead of endeavouring to change, by the impulse of reason, that universal assent, which in this and every country constitutes the law for all."

Paine was convicted; and Mr. Erskine, as a reward for the brave and honest defence which his duty compelled him to make for his client, was, to the lasting disgrace and infamy of those from whom the measure proceeded, removed from his office of attorney-general to the Prince of Wales. To this removal he adverted in his defence of Horne Tooke in the following manner: — "Gentlemen, Mr. Tooke had an additional and a generous motive for appearing to be the supporter of Mr. Paine:—the constitution was wounded through his sides. I blush, as a Briton, to recollect, that a conspiracy was formed among the highest orders, to deprive this man of a British trial. This is the clue to Mr. Tooke's conduct, and to which, if there should be no other witnesses, I will step forward to be examined. I assert, that there was a conspiracy to shut out Mr. Paine from the privilege of being defended: he was to be deprived of counsel; and I, who now speak to you, was threatened with the loss of office if I appeared as his advocate. I was told in plain terms that I must not defend Mr. Paine. I did defend him, and I did lose my office."

Of this transaction Lord Erskine, a few years before his death, gave a detailed account, in a letter addressed to Mr. Howell, editor of the State Trials.* "When attorney-general to the Prince of Wales, I was retained by Thomas Paine in person to defend him on his approaching

* State Trials, vol. xxvi. p. 715.

trial for publishing the second part of his 'Rights of Man;' but it was soon intimated to me by high authority, that it was considered to be incompatible with my situation, and the prince himself in the most friendly manner acquainted me that it was highly displeasing to the king, and that I ought to endeavour to explain my conduct, which I immediately did in a letter to his majesty himself, in which, after expressing my sincere attachment to his person and to the constitution of the kingdom, attacked in the work which was to be defended, I took the liberty to claim, as an invaluable part of that very constitution, the unquestionable right of the subject to make his defence by any counsel of his own free choice, if not previously retained, or engaged by office from the crown; and that there was no other way of deciding whether that was or was not my own situation as attorney-general to the prince, than by referring, according to custom, that question to the bar, which I was perfectly willing and even desirous to do. In a few days afterwards I received, through my friend the late Admiral Paine, a most gracious message from the prince, expressing his deep regret in feeling himself obliged to receive my resignation, which was accordingly sent. But I owe it to his royal highness to express my opinion, that, circumstanced as he was, he had no other course to take in those disgraceful and disgusting times, and that my retainer for Paine was made a pretext by the king's ministers for my removal, because my worthy and excellent friend Sir A. Piggott was removed from the office of the prince's solicitor-general at the very same moment, although he had nothing whatever to do with Mr. Paine or his book. The fact is, that we were both, I believe, at that time members of a society for the reform of parliament, called 'The Friends of the People.'"

It was very honourable to the Prince of Wales that he subsequently made reparation to Mr. Erskine for this act of injustice. "It would, however," continues Lord Erskine, in the same letter, "be most unjust as well as ungrateful to the Prince Regent not to add, that in a few years after-

wards his royal highness, of his own mere motion, sent for me to Carlton House, whilst he was still in bed under a severe illness, and, taking me most graciously by the hand, said to me, that though he was not at all qualified to judge of retainers, nor to appreciate the correctness or incorrectness of my conduct in the instance that had separated us, yet that, being convinced I had acted from the purest motives, he wished most publicly to manifest that opinion, and therefore directed me to go immediately to Somerset House, and to bring with me, for his execution, the patent of chancellor to his royal highness, which he said he had always designed for me; adding, that owing to my being too young when his establishment was first fixed, he had declined having a chancellor at that time; that during our separation he had been more than once asked to revive it, which he had refused to do, looking forward to this occasion; and I accordingly held the revived office of chancellor to the Prince of Wales until I was appointed chancellor to the king, when I resigned it, in conformity with the only precedent in the records of the duchy of Cornwall, viz. that of Lord Bacon, who was chancellor to Henry Prince of Wales, and whose resignation is there recorded, because of his acceptance of the great seal in the reign of King James the first."

During the session of 1792, Mr. Fox brought forward his celebrated libel bill, which he supported in a most argumentative and forcible speech, in the course of which he took occasion to mention that of Mr. Erskine on the trial of the Dean of St. Asaph;—"a speech so eloquent, so luminous, and so convincing, that it wanted in opposition to it not a man but a giant." * The motion of Mr. Fox was seconded by Mr. Erskine; and his speech on this occasion may be taken as an example of the inferiority of his parliamentary eloquence. Compared with the splendid oration so justly panegyrised by Mr. Fox, it is tame, feeble, and inanimate,—a lifeless recapitulation of his former arguments.

* Cobbett's Parl. Deb. vol. xxix. p. 562.

In the course of the same session Mr. Erskine supported the motion of Lord (then Mr.) Grey for reform. This motion was made in consequence of a resolution of a society to which both the mover and seconder belonged, the Society of the Friends of the People. Of the nature of that association, and of his own objects in joining it, he has spoken in his pamphlet on the war with France.* "A few gentlemen, not above fifty in number, and consisting principally of persons of rank, talents, and character, formed themselves into a society, under the name of the Friends of the People. They had observed, with concern, as they professed in the published motives of their association, the grossly unequal representation of the people in the house of commons, its effects upon the measures of government, but, above all, its apparent tendency to lower the dignity of parliament, and to deprive it of the opinion of the people. Their avowed object was, therefore, to bring the very cause, which Mr. Pitt had so recently taken the lead in, fairly and respectfully before the house of commons, in hopes, as they declared, to tranquillise the agitated part of the public, to restore affection and respect for the legislature, so necessary to secure submission to its authority, and, by concentrating the views of all reformers to the preservation of our invaluable constitution, to prevent that fermentation of political opinion, which the French revolution had undoubtedly given rise to, from taking a republican direction in Great Britain. I declare upon my honour," adds Mr. Erskine, in a note, "these were my reasons for becoming a member of that society. These were not only the professed objects of this association, but the truth and good faith of them received afterwards the sanction of judicial authority, when their proceedings were brought forward by government in the course of the state trials." Mr. Grey's motion was supported by Mr. Fox and Mr. Erskine, and opposed by Mr. Burke and Mr. Windham. Mr. Erskine's speech was upon the whole feeble, and displayed

* Page 13.

very little of the fire and energy which distinguish his orations at the bar. It was principally confined to a vindication, or rather an apology, for the society of the Friends of the People, and for himself in becoming a member of the society. He concluded with an ungraceful reference to his own success in his profession. "The measures of the association," he said, "so much alluded to, were the most likely to preserve the peace of the country, and it was therefore he had subscribed to them. If their tendency was otherwise, he must be the worst of lunatics, his situation being considered, his unparalleled success, his prosperity so wonderful, when his origin was viewed, his present possession of every thing to make a man happy, and his prospects which there was nothing to interrupt. Why should he then waste his own constitution, when he was endeavouring to preserve that of the country, and when he might be in peace with his family, if his attempts were to endanger that prosperity which was so dear to him?" *

In the year 1793, Mr. Erskine appeared as the advocate of Mr. John Frost, an attorney, who was indicted for uttering seditious words at the Percy coffee-house. The words, which were certainly of a character sufficiently seditious, were spoken after dinner, and in the excitement of argument, and the witnesses to prove the speaking of them were certain individuals who happened to be present in the coffee-house at the time. These circumstances furnished the ingenious and skilful mind of Mr. Erskine with some admirable topics of defence, and in particular afforded him an opportunity of declaiming against that infamous system of *informing*, which about this period had become so fearfully common.

"Gentlemen, it is impossible for me to form any other judgment of the impression which such a proceeding altogether is likely to make upon your minds, than that which it makes upon my own. In the first place, is society to be protected by the breach of those confidences, and by the destruction of that security and tranquillity,

* Cobbett's Parl. Deb. vol. xxix. p. 1330.

which constitute its very essence every where, but which, till of late, most emphatically characterised the life of an Englishman? Is government to derive dignity and safety by means which render it impossible for any man who has the least spark of honour to step forward to serve it? Is the time come when obedience to the law and correctness of conduct are not a sufficient protection to the subject, but that he must measure his steps, select his expressions, and adjust his very looks, in the most common and private intercourses of life? Must an English gentleman in future fill his wine by a measure, lest in the openness of his soul, and whilst believing his neighbours are joining with him in that happy relaxation and freedom of thought which is the prime blessing of life, he should find his character blasted, and his person in a prison? Does any man put such constraint upon himself in the most private moment of his life, that he would be contented to have his loosest and lightest words recorded, and set in array against him in a court of justice? Thank God, the world lives very differently, or it would not be worth living in. There are moments when jarring opinions may be given without inconsistency, when Truth herself may be sported with without the breach of veracity, and when well-imagined nonsense is not only superior to, but is the very index to wit and wisdom. I might safely assert, taking, too, for the standard of my assertion the most honourably correct and enlightened societies in the kingdom, that if malignant spies were properly posted, scarcely a dinner would end without a duel and an indictment.

"When I came down this morning, and found, contrary to my expectation, that we were to be stuffed into this miserable hole in the wall (*the court of common pleas*), to consume our constitutions, suppose I had muttered along through the gloomy passages, 'What! is this cursed trial of Hastings going on again? Are we to have no respite? Are we to die of asthma in this damned corner? I wish to God the roof would come

down, and abate the impeachment, lords, commons, and all together.' *Such a wish proceeding from the mind* would be desperate wickedness, and the serious expression of it a high and criminal contempt of parliament. Perhaps the bare utterance of such words without meaning would be irreverent and foolish; but still if such expressions had been gravely imputed to me as the result of a malignant mind, seeking the destruction of the lords and commons of England, how would they have been treated in the house of commons on a motion for my expulsion? How! the witness would have been laughed out of the house before he had half finished his evidence, and would have been voted to be too great a blockhead to deserve a worse character. Many things are, indeed, wrong and reprehensible, that neither do nor can become the object of criminal justice, because the happiness and security of social life, which are the very end and object of all law and justice, forbid the communication of them; because the spirit of a gentleman, which is the most refined morality, either shuts men's ears against what should not be heard, or closes their lips with the sacred seal of honour.

"This tacit but well-understood and delightful compact of social life is perfectly consistent with its safety. The security of free governments, and the unsuspecting confidence of every man who lives under them, are not only compatible but inseparable. It is easy to distinguish where the public duty calls for the violation of the private one. Criminal intention—but not indecent levities—not even grave opinions, unconnected with conduct, are to be exposed to the magistrate; and when men, which happens but seldom, without the honour or the sense to make the due distinctions, force complaints upon governments which they can neither approve of nor refuse to act upon, it becomes the office of juries—as it is yours to-day—to draw the true line in their judgments, measuring men's conduct by the safe standards of human life and experience."

In the year 1794, Mr. Erskine was taken down spe-

cial to Lancaster, to defend a gentleman of the name of Walker, who, together with some other persons, was indicted for a conspiracy to overthrow the government. This prosecution, which arose out of the exasperated party feeling of the unhappy period when it occurred, was founded entirely on the evidence of a profligate informer, who was convicted of perjury at the very same assizes at which he had attended to give evidence. The task of the advocate was, therefore, not a very difficult one; and the trial would not have been noticed in this place, if it had not been remarkable, as containing one of the very few passages approaching to the humorous that are to be found in Lord Erskine's speeches. It had been proved on the part of the prosecution, that Mr. Walker had kept various kinds of arms in his house, for the possession of which Mr. Erskine undertook to account:—

"Gentlemen, Mr. Walker's conduct had the desired effect: he watched again on the 13th of December; but the mob returned no more, and the next morning the arms were locked up in a bedchamber in his house, and where, of course, they never could have been seen by the witness, whose whole evidence commences above a week subsequent to the 11th of December, when they were finally put aside. This is the genuine history of the business, and it must therefore not a little surprise you, that when the charge is wholly confined to the use of arms, Mr. Law should not even have hinted to you that Mr. Walker's house had been attacked, and that he was driven to stand upon his defence, as if such a thing had never had an existence. Indeed, the armoury which must have been exhibited in such a statement would have but ill suited the indictment or the evidence, and I must, therefore, undertake the description of it myself.

"The arms having been locked up, as I told you, in the bedchamber, I was shown last week into this house of conspiracy, treason, and death, and saw exposed to view this mighty armoury, which was to level the beautiful fabric of our constitution, and to destroy the lives and properties of ten millions of people. It consisted,

first, of six little swivels, purchased two years ago at the sale of Livesay, Hargrave, and Co. (of whom we have all heard so much), by Mr. Jackson, a gentleman of Manchester, who is also one of the defendants, and who gave them to Master Walker, a boy of about ten years of age. Swivels, you know, are guns so called, because they turn upon a pivot; but these were taken off their props, were painted, and put upon blocks resembling the carriages of heavy cannon, and in that shape may fairly be called children's toys. You frequently see them in the neighbourhood of London adorning the houses of sober citizens, who, strangers to Mr. Brown and his improvements, and preferring grandeur to taste, place them upon their ramparts at Mile End or at Islington. Having, like Mr. Dunn [the witness for the prosecution],—I hope I resemble him in nothing else,—having like him served his majesty as a soldier (and I am ready to serve again if my country's safety should require it), I took a close review of all I saw, and observing that the muzzle of one of them was broken off, I was curious to know how far this famous conspiracy had proceeded, and whether they had come into action, when I found that the accident had happened on firing a *feu de joie* upon his majesty's happy recovery, and that they had been afterwards fired upon the Prince of Wales's birth-day. These are the only times that, in the hands of these conspirators, these cannon, big with destruction, had opened their little mouths; once to commemorate the indulgent and benign favour of Providence in the recovery of the sovereign, and once as a congratulation to the heir apparent of his crown on the anniversary of his birth.

"I went next, under the protection of the master-general of this ordnance (Mr. Walker's chambermaid), to visit the rest of this formidable array of death, and found a little musketoon about so high (*describing it*). I put my thumb upon it, when out started a little bayonet, like the jack-in-the-box which we buy for children at a fair. In short, not to weary you, gentlemen, there

was just such a parcel of arms, of different sorts and sizes, as a man collecting amongst his friends for his defence against the sudden violence of a riotous multitude might be expected to have collected: here lay three or four rusty guns of different dimensions, and here or there a bayonet or broadsword, covered over with dust and rust, so as to be almost undistinguishable; for, notwithstanding what this infamous wretch has sworn, we will prove by witness after witness, till you desire us to finish, that they were principally collected on the 11th of December, the day of the riot, and that from the 12th in the evening, or the 13th in the morning, they have lain untouched as I have described them; that their use began and ended with the necessity, and that from that time to the present there never has been a fire-arm in the warehouse of any sort or description."

In the speech on the trial of Horne Tooke a brilliant passage of the same kind occurs.

"But to give the case of Lord Lovat any bearing upon the present, you must first prove that our design was to arm, and I shall then admit the argument and the conclusion. But has such proof been given on the present trial? It has not been attempted; the abortive evidence of arms has been abandoned. Even the solitary pike, that formerly glared rebellion from the corner of the court, no longer makes its appearance, and the knives have retired to their ancient office of carving. Happy was it indeed for me, that they were ever produced; for so perfectly common were they throughout all England, and so notoriously in use for the most ordinary purposes, that public justice and benevolence, shocked at the perversion of truth in the evidence concerning them, kept pouring them in upon me from all quarters. The box before me is half full of them; and if all other trades should fail me, I might set up a cutler's shop in consequence of this cause."

In the course of the same speech Mr. Erskine accounts for that general absence of humour which is noticed above. He considered it incompatible with the

dignity of such efforts. "There is not only no evidence upon which reasonable men could deliberate between a verdict of *Guilty* and *Not guilty*, but literally *no evidence at all:* nothing that I could address myself to, but through the medium of ridicule, which, much as it would apply to the occasion in other respects, it would be indecent to indulge in, in a great state trial so deeply concerning the dignity of the country, and so seriously affecting the unfortunate persons whom I shall be called upon to defend hereafter."

Even in Lord Erskine's miscellaneous speeches few instances occur of any attempt at humour; though, in the case of *Morton* v. *Fenn*, which was an action brought by a middle-aged woman against an old and infirm man, for breach of promise of marriage, there occurs a sufficiently droll description of the unfortunate defendant. "It is probable," said Mr. Erskine, "that her (the plaintiff's) circumstances were very low, from the character in which she was introduced to the defendant, who, being an old and infirm man, was desirous of some elderly person as a housekeeper; and no imputation can be justly cast upon the plaintiff for consenting to such an introduction; for, by Mr. Wallace's favour, the jury had a view of this defendant, and the very sight of him rebutted every suspicion that could possibly fall upon a woman of any age, constitution, or complexion. I am sure every body who was in court must agree with me, that all the diseases catalogued in the dispensatory seemed to be running a race for his life, though the asthma appeared to have completely distanced his competitors, as the fellow was blowing like a smith's bellows the whole time of the trial. His teeth being all gone, I shall say nothing of his gums; and as to his shape, to be sure, a bass-fiddle is perfect gentility compared to it." He concluded with expressing a wish, that the young woman whom the defendant had married "would manifest her affection by furnishing him with a pair of horns, sufficient to defend himself against the sheriff, when he came to levy the money under the verdict."

The genius of Erskine seems to have been created at the very period which enabled it to shine forth in its brightest lustre. Had he lived in the generation either preceding or following his own, his eloquence would never have been called out, as it was by the extraordinary and perilous circumstances in which this country was placed at the latter end of the last century. All the great principles of human action and human government were called in question; and while, on the one hand, amongst the people, rash and ill-advised individuals were found, who pressed to their extremities those just theories of politics upon which the welfare of nations depends; the government, on the other hand, terrified at the excesses to which such speculations had led in France, under circumstances totally different from any that existed in England, grew jealous even of those liberties and privileges which were guaranteed by the constitution. Societies and affiliated societies for procuring a reform in parliament increased in rapid progression, and language was occasionally employed, of the seditious tendency of which no doubt could be entertained. At length, the subject of these dangerous associations was brought before parliament, which granted extraordinary powers to government, by an act *, reciting that a treacherous and detestable conspiracy had been formed for subverting the existing laws and constitution, and for introducing the system of anarchy and confusion which had lately prevailed in France. The popular mind being thus, by the highest authority, suitably affected with apprehensions and terrors, the minister resolved to strike a blow which should place at his absolute mercy the blood of every man who had ventured to become a member of the obnoxious associations. The attorney-general was directed to proceed against several of the more conspicuous members of these societies for high treason, as having been guilty of a conspiracy to compass and imagine the death of the king. The first person brought to trial was Mr. Thomas Hardy, a re-

* 34 G. 3. c. 54.

spectable tradesman, who had acted as the secretary of the Constitutional Society. Mr. Erskine, assisted by Mr. Gibbs, appeared as his counsel, and never in the judicial history of this country did so weighty, so overwhelming, so appalling a duty devolve upon any one man. The lives and fortunes of thousands of his countrymen, nay the liberties of his country itself, were involved in the issue. Had a conviction been obtained against Hardy, the consequences might have been most fatal. The streams of blood flowing from the scaffold must have been swelled by that shed in civil disturbances. Already the passions of the people were excited to a degree which every day threatened the public tranquillity; and nothing was wanting but some grand spectacle of blood, like that contemplated by the government, to rouse them into action. In addition to these overpowering considerations, the trial itself was of a nature to waste or to crush the energies and courage of the most constant mind. Such a proceeding was unparalleled in the annals of the state trials of England. The charge against the prisoner was to be proved from the conduct, speeches, and publications of a thousand different persons, at various periods of time and in various places. The trial commenced on Tuesday the 28th of October; and the opening of Sir John Scott, the attorney-general, occupied upwards of seven hours. The evidence for the crown was not concluded until two o'clock on the following Saturday, when Mr. Erskine, who had petitioned for and obtained an adjournment for a few hours on that morning, to afford him an opportunity of arranging the evidence, came into court, and delivered a speech which, standing alone, would place his name at the very head of the English forensic orators. The two grand objects to which he applied himself, were to cut down the law of constructive treason, and to prove the innocent and legal intentions of the accused. His argument on the first branch was even superior to that which he delivered on the trial of Lord George Gordon, and may be regarded as

the most substantial monument of his genius. Of his indignant and triumphant defence of the principles upon which the obnoxious societies were founded, it is impossible to speak in terms adequate to its skill, its force, and its splendour. The noble effort was crowned with merited success, and the verdict of the jury might have been foretold in the popular acclamations which attended the close of the speech. "When Mr. Erskine had finished his speech, an irresistible acclamation pervaded the court, and to an immense distance around. The streets were seemingly filled with the whole of the inhabitants of London; and the passages were so thronged, that it was impossible for the judges to get to their carriages. Mr. Erskine went out and addressed the multitude, desiring them to confide in the justice of the country, reminding them that the only security of Englishmen was under the inestimable laws of England, and that any attempt to overawe or bias them would not only be an affront to public justice, but would endanger the lives of the accused. He then besought them to retire, and in a few minutes, there was scarcely a person to be seen near the court. No spectacle could be more interesting and affecting." *

Notwithstanding the acquittal of Hardy, so intent was the government upon convincing the country of the existence of that treasonable conspiracy, which it ought to have considered its own deep disgrace, that Mr. Horne Tooke was immediately put upon his trial, and Mr. Erskine had once more to go over the same ground which he had so triumphantly trod in his defence of Hardy. His speech was, consequently, in all its essential parts, a repetition of the brilliant oration he had just delivered. But the circumstances in which he now stood induced him to assume even a higher and more confident *tone*; and in one instance, where his doctrines seemed to excite something like disapprobation, he enforced them in a manner which showed his full confidence in the verdict.

* Erskine's Speeches, vol. iii. p. 502.

"To expose further the extreme absurdity of this accusation, if it be possible further to expose it, let me suppose that we were again at peace with France, while the other nations, who are now our allies, should continue to prosecute the war, — would it *then* be criminal to congratulate France upon her successes against them? When that time arrives, might I not honestly wish the triumph of the French arms? And might I not lawfully express that wish? I know certainly that I might — and I know also that I would! *I observe, that this sentiment seems a bold one;* but who is prepared to tell me that I shall not? I WILL assert the freedom of an Englishman; I WILL maintain the dignity of man; I WILL vindicate and glory in the principles which raised this country to her pre-eminence among the nations of the earth; and as she shone the bright star of the morning, to shed the light of liberty upon nations which now enjoy it, so may she continue in her radiant sphere to revive the ancient privileges of the world, which have been lost, and still to bring them forward to tongues and people who have never yet known them, in the mysterious progression of things."

The principle which governed Mr. Erskine in these defences was fully developed by him afterwards in his speech, in the following year, upon Mr. Sheridan's motion for the repeal of the *habeas corpus* suspension act.* "Little reliance had we upon the law as we stated it; for though we were firmly convinced that the defence was invulnerable in point of law, not only by the statute, but even by all the authorities, yet we did not expect that the jury would prefer our statement, as advocates, to the judgment of the court, whether well or ill-founded; but we looked to the great sheet-anchor of the cause, viz. the gross falsehood and absurdity of the supposed conspiracy, on which we relied, and on which we prevailed."

During the session of 1795–96 Mr. Erskine distinguished himself in parliament by his strenuous opposi-

* Parl. Hist. vol. xxxi. p. 1094.

tion to two measures, which were, as he conceived, directed against the liberty of the subject. Upon the first of these, the seditious meetings' bill, he spoke with an energy and boldness not often exhibited within the walls of parliament. "'If the king's ministers,'" said he, adopting the words of Lord Chatham, "'will not admit a constitutional question to be decided on according to the forms and on the principles of the constitution, it must then be decided in some other manner; and rather than that it should be given up, rather than the nation should surrender their birth-right to a despotic minister, I hope, my lords, old as I am, I shall see the question brought to issue, and fairly tried between the people and the government.' With the sanction of the sentiments of the venerable and illustrious Earl of Chatham, I will maintain that the people of England should defend their rights, if necessary, by the last extremity to which freemen can resort. For my own part, I shall never cease to struggle in support of liberty. In no situation will I desert the cause; I was born a free man, and, by God, I will never die a slave!" * In the debates on the proceedings respecting Mr. Reeve's libel on the British constitution Mr. Erskine also took an active part.

In the first session of the new parliament which met in 1796, Mr. Erskine, having been again returned for Portsmouth, took a part in the debates on the king's message respecting the rupture of the negotiation for peace. His speech on this occasion was interrupted by a sudden attack of illness: "he suddenly stopped, and, after a pause, sat down under evident symptoms of indisposition." †

The subject of reform being again brought before parliament by Mr. Grey in 1797, Mr. Erskine supported him in a very argumentative speech ‡, his only effort in parliament in the course of that year. Nor does his name occur again in the debates until the year 1800, upon the debate on the king's message respecting overtures of peace

* Parl. Hist. vol. xxxii. p. 313. † Id. p. 1466.
‡ Id. vol. xxxiii. p. 653.

from the consular government of France.* In the course of the same year he spoke in favour of an attempt made to repress adultery by the sanctions of criminal justice. He said, "That it never, perhaps, had fallen to the lot of any man to have conducted so many civil actions of this description, and that it was the result of that experience that had convinced him, not merely of the impropriety, but of the senseless absurdity, of considering adultery as a civil injury, instead of a high public offence." † In the following year he took a part in the debates on the eligibility of Mr. Horne Tooke to sit in the house of commons ‡; and in 1802 he spoke at some length on the motion for an address respecting the removal of Mr. Pitt. §

In general all the great efforts of Mr. Erskine at the bar, especially in the political cases in which he was engaged, were on behalf of the accused; but in 1797 he appeared as counsel for the prosecution in the case of Williams, indicted for the publication of Paine's "Age of Reason." The task, which in other hands would have been easy, presented to him considerable difficulties, which, however, he avoided with great discretion and success, deserting not a single one of the principles which he had on other occasions maintained. The prosecution in this case had been instituted by the "Proclamation Society," an association for the suppression of blasphemous and seditious publications, and Mr. Erskine appeared to support it by virtue of the general retainer which he held for the society. Williams was convicted, and on the motion of Mr. Erskine was brought up for judgment. Between the time of that motion and the judgment of the court being passed upon him, some circumstances occurred which induced Mr. Erskine to suggest, to those who employed him, the propriety of instructing him to state that they were satisfied with the punishment already inflicted on the defendant by his commitment to Newgate. The answer

* Parl. Hist. vol. xxxiv. p. 1286.
† Id. vol. xxxv. p. 312.
‡ Id. p. 1335. 1397.
§ Id. vol. xxxvi. p. 616.

from the society was that though they did not wish to press for a severe judgment, they did not feel themselves justified in expressing a wish for lenity. This resolution being communicated by the secretary to Mr. Erskine, he declined being further concerned for the society, and returned their retainer. A statement of the circumstances, which induced Mr. Erskine to adopt this unusual step, was many years afterwards communicated by him to Mr. Howell, the editor of the State Trials, at the request of that gentleman.* The narrative is a very interesting one. "Having convicted Williams, as will appear by your report of his trial, and before he had notice to attend the court to receive judgment, I happened to pass one day through the Old Turnstile, from Holborn, in my way to Lincoln's Inn Fields, when in the narrowest part of it I felt something pulling me by the coat, when on turning round I saw a woman at my feet bathed in tears, and emaciated with disease and sorrow, who continued almost to drag me into a miserable hovel in the passage, where I found she was attending upon two or three unhappy children in the confluent small-pox, and in the same apartment, not above ten or twelve feet square, the wretched man whom I had convicted was sewing up little religious tracts, which had been his principal employment in his trade; and I was fully convinced that his poverty and not his will had led to the publication of this infamous book, as, without any kind of stipulation for mercy on my part, he voluntarily and eagerly engaged to find out all the copies in circulation, and to bring them to me to be destroyed.

"I was most deeply affected with what I had seen, and feeling the strongest impression that he offered a happy opportunity to the prosecutors of vindicating, and rendering universally popular, the cause in which they had succeeded, I wrote my opinion to that effect, observing (if I well remember), that mercy being the grand characteristic of the Christian religion, which

* State Trials, vol. xxvi. p. 714.

had been defamed and insulted, it might be here exercised not only safely, but more usefully to the objects of the prosecution, than by the most severe judgment, which must be attended with the ruin of this helpless family.

"My advice was most respectfully received by the society, and I have no doubt honestly rejected, because that most excellent prelate Bishop Porteus, and many other honourable persons, concurred in rejecting it; but I had still a duty of my own to perform, considering myself not as counsel for the society, but for the crown. If I had been engaged for all or any of the individuals composing it, prosecuting by indictment for any personal injury punishable by indictment, and had convicted a defendant, I must have implicitly followed my instructions, however inconsistent with my own ideas of humanity or moderation; because every man who is injured has a clear right to demand the highest penalty which the law will inflict; but in the present instance I was in fact not retained at all, but responsible to the crown for my conduct. Such a voluntary society, however respectable or useful, having received no injury, could not erect itself into a *custos morum*, and claim a right to dictate to counsel who had consented to be employed on the part of the king for the ends of justice only."

In the year 1797, Mr. Erskine published his *View of the Causes and Consequences of the present War with France*, a pamphlet which attracted very great attention, and in the course of the first year after its publication went through several large editions. To expose the folly and futility of that apparently interminable war of principle in which we were then engaged with France was the object of this excellent publication, which, although it produced a considerable effect upon the public mind, failed in any manner to influence the measures of government. In point of composition this pamphlet, when compared with the speeches, undoubtedly appears inferior. There is an effort in the style

by no means in all cases successful; and it wants not only the freedom, but sometimes the force, which distinguish all the speeches. The first twenty pages will be found an excellent introduction to the speeches on the cases of high treason in 1794. The origin and progress of the societies for reform are there clearly though briefly detailed; and while the excesses of some are admitted, the legality of their general object is maintained and defended.

In a letter addressed to Dr. Parr soon after the publication of the above pamphlet, Mr. Erskine says, "I cannot say how much I thank you for remarking the negligence with which it cannot but be filled. I wonder it is not nonsense from beginning to end, for I wrote it amidst constant interruption, great part of it in open court, during the trial of causes. Fifteen thousand copies have been sold in England, besides editions printed at Dublin and Edinburgh, where the sale has been unusual."*

In the speeches of Mr. Erskine already noticed there are none, with the exception of that on the trial of Lord George Gordon, exhibiting, in any prominent manner, those skilful observations upon evidence which form the chief part of our forensic oratory. The cases of libel afforded no opportunity of the kind; and in the great trials for high treason in 1794, the evidence, though most voluminous, was of a nature that admitted of nothing but general comments. It might be supposed, from the perusal of those speeches, that, however successful Mr. Erskine might be in selecting and arguing upon the principle of a defence, it was yet very possible that in cases depending upon the nice and skilful weighing of doubtful or contradictory evidence, and in the delicate task of presenting it in a proper light to the jury, he might be found not to possess the same admirable qualities which he displayed in cases involving general argument and observation. That such, however, was not the fact appeared almost daily in the course of

* Parr's Works, vol. vii. p. 628.

his large professional practice at Guildhall; and though so few cases are to be found amongst his printed speeches in corroboration of this assertion, there is one which affords full and sufficient evidence of its correctness. In the year 1799 Lord Thanet, Mr. Fergusson a barrister, and some other gentlemen, were indicted for a misdemeanor in attempting to rescue Arthur O'Connor on his acquittal on a trial for high treason, and before he was discharged by the court. The case rested entirely on the nicest construction of evidence, it being necessary for the crown to prove the motives of the defendants from their conduct in the midst of a most sudden and alarming tumult. The judges who presided at the trial and many other honourable persons were called by the crown; and to explain away the evidence of those witnesses, to clear up the ambiguity it occasioned, and to reconcile it with the supposition of his clients' innocence, and with the evidence of other persons equally high in character, who appeared for the defendants, required talents of a very peculiar and admirable order. Yet this task was accomplished by Mr. Erskine with a degree of skill which proves him to have been an advocate highly accomplished in this very difficult branch of his profession. Notwithstanding the great ingenuity displayed on behalf of the defendants, and the real strength of their case, the jury found a verdict of guilty, which was probably very greatly owing to the bold and skilful cross-examination of Mr. Sheridan, one of the witnesses for the defence, by Mr. Law, afterwards Lord Ellenborough.

Upon the trial of Hadfield, in April, 1800, for high treason, in shooting at the king in the theatre of Drury-lane, Mr. Erskine appeared as counsel for the prisoner; and notwithstanding the apparent leaning of the court, at the commencement of the trial, to a contrary opinion, succeeded in establishing the derangement of the prisoner. There cannot, perhaps, be any where found a more clear and accurate commentary on insanity, as connected with the criminal law, than is contained in

this speech. The principle for which Mr. Erskine contended, and within which he successfully attempted to bring the case of his client, was, that where the act in question is the immediate unqualified offspring of the disease, and in such case only, the perpetrator of that act is not exposed to the penalties of criminal justice. Such, undoubtedly, was the crime attempted by the prisoner, who acted under the morbid delusion that he was called upon to perish for the benefit of mankind, and who, in pursuance of that delusion, purposely exposed himself to the vengeance of the law. It has been said that the counsel for the crown were dissatisfied with the view of the case ultimately taken by the court.

In the year 1802, Mr. Erskine, in common with many other distinguished Englishmen, taking advantage of the peace, visited Paris. He was presented to the first consul on the same day with Mr. Fox; but the fame of the latter seemed totally to eclipse that of all his countrymen in the estimation of Napoleon, who did not appear to be duly sensible of Mr. Erskine's great celebrity and singular merit, passing him with the simple question, *Etes-vous légiste?* *

During the administration of Mr. Addington, Mr. Erskine, led by the example of Lord Moira, Mr. Sheridan, Mr. Tierney, and others of the friends with whom he had usually acted, manifested a willingness to support the new minister, and was even on the point of accepting the office of attorney-general. Overtures to that effect having been transmitted to him by Mr. Addington, he thought it his duty to lay them before the Prince of Wales, whose service, in case of an acceptance of the office, it would be necessary for him to relinquish. In his answer, conveyed through Mr. Sheridan, the prince, while he expressed the most friendly feelings towards Mr. Erskine, declined at the same time giving any opinion, as to either his acceptance or refusal of the office of attorney-general, if offered to him under the present circumstances. His royal highness also added

* Trotter's Memoirs of Fox, p. 269.

the expression of his sincere regret, that a proposal of this nature should have been submitted to his consideration by one of whose attachment and fidelity to himself he was well convinced, but who ought to have felt, from the line of conduct adopted and persevered in by his royal highness, that he was the very last person who should have been applied to for either his opinion or countenance respecting the political conduct or connections of any public character, especially of one so intimately connected with him, and belonging to his family." * Upon this expression of the prince's sentiments, the offer was of course declined.

In the negotiations which took place about this time between Mr. Fox and the Grenville-Windhamites, as they were termed, Mr. Erskine adhered to the party of the *old opposition*. He formed one of those who met at Norfolk House for the purpose of presenting a friendly remonstrance to Mr. Fox, stating the various reasons which offered themselves against the formation of the contemplated alliance. The remonstrance was said to have been drawn up by Mr. Erskine. †

At length, on the formation of the Whig ministry in 1806, the consistency and integrity of Mr. Erskine were rewarded by the gift of the highest dignity which his profession could confer. Although his practice had been confined altogether to the courts of common law, his character and reputation were such, that the great seal was, without hesitation, confided to his hands, and he was immediately created a peer, by the title of Baron Erskine of Restormel Castle, in the county of Cornwall, on the suggestion, as it appears by his own narration, of the Prince of Wales. In a letter to Mr. Howell ‡, referring to his conduct with regard to his loss of office, in consequence of his defence of Paine, he says, "I have troubled you with this short history, because it may remind some who are but too apt to think that unprincipled subserviency is the surest road to prefer-

* Moore's Life of Sheridan, vol. ii. p. 323. † Id. p. 324.
‡ State Trials, vol. xxvi. p. 716.

ment, that *honesty is the best policy;* since, when the great seal was afterwards vacant, his royal highness, in conjunction with my revered friend Charles Fox, considered my succession as indispensable to the formation of the new administration, presented me with a seal with my initial and a coronet engraved on it, and desired me to take Restormel Castle as the designation of my title, as belonging to the Duchy of Cornwall, and the seat of the most ancient Dukes of Cornwall."

On the breaking up of the administration in 1807, Lord Erskine accompanied the friends with whom he had so long acted, and resigned the great seal.

From the period of his retirement from office, Lord Erskine seldom appeared in public life. In the year 1809, however, he came forward in a cause which can never fail to engage the sympathies of every person of common feeling — the repression of wanton and malicious cruelty to animals. With this view he introduced a bill into the house of lords, which, upon the second reading, he supported in a speech which, if not glowing with the splendour of his former eloquence, was full of the most amiable and at the same time the most elevated sentiments. The bill, after passing the lords, was lost in the commons, by the influence of the false and frivolous argument to which Lord Erskine adverted in his speech. "As to the tendency of barbarous sports," said he, "of any kind or description whatsoever, to nourish the national characteristics of manliness and courage (the only shadow of argument I ever heard on such occasions), all I can say is this, that from the mercenary battles of the lowest of beasts (viz. human boxers) up to those of the highest and noblest that are tormented by man for his degrading pastime, I enter this public protest against it. I never knew a man remarkable for heroic bravery whose very aspect was not lighted up by gentleness and humanity, nor a kill-and-eat-him countenance, that did not cover the heart of a bully or a poltroon." * Lord Erskine had the satisfaction before he died of seeing a

* Printed Speech, p. 11.

bill embodying many of the provisions of that introduced by himself pass into a law.

Of the later years of Lord Erskine's life little remains to be told. Unfortunately, those years were not free from embarrassments and failings, which it would be painful to relate. His pecuniary circumstances involved him in difficulties from which a second marriage, into which he entered, did not tend to extricate him. Occasionally only he appeared in public. With that warm attachment to freedom which distinguished his earlier days he came forward to the assistance of the struggling Greeks, and gave to their cause the aid of his honoured but almost forgotten name. To interest the nation in their favour, he resumed his pen, and published various pamphlets on the subject. He also, a few years later, gave to the world a political romance, under the title of "Armata." In the year 1815, on the death of the Marquis of Lothian, the Prince Regent, in memory of his former friendship and attachment to Lord Erskine, was pleased to bestow upon him the order of the thistle.

At length that event occurred which those who loved his fame would gladly have welcomed earlier. In the year 1823, as he was accompanying one of his sons to Edinburgh by sea, he was attacked with inflammation of the chest, a complaint from which he had before sufferred very severely. He was in consequence set on shore at Scarborough, whence he travelled by easy stages to Scotland. The complaint, however, gained ground, and on the 17th of November he died at Almondale, six or seven miles from Edinburgh. On the 28th of the same month he was buried in the family vault at Uphall church.

Lord Erskine had issue three sons and five daughters by his first wife. He was succeeded in his title by his eldest son, David Montague.

The eloquence of Lord Erskine was of a very high order. Though never deficient in any of those qualities, it was not indebted for its excellence either to beauty of diction, or to richness of ornament, or to feli-

city of illustration:—it was from its unrivalled strength and vigour that it derived its superior character. The intentness, the earnestness, the vehemence, the energy of the advocate, were ever present throughout his speeches, impressing his arguments upon the mind of the hearer with a force which seemed to compel conviction. Throughout even the longest of his speeches, there is no weakness, no failing, no flagging; but the same lively statement of facts, the same spirited and pointed exposition of argument. He never gave way to what he has happily termed "the Westminster Hall necessity"—of filling up his speech with common places; but invariably presented his subject in some striking or brilliant light, which never failed to rivet the attention, and to work upon the convictions of the audience.

In examining those particular qualities of Lord Erskine's speeches which contributed more obviously to their success, the most remarkable will appear to be the exact and sedulous adherence to some one great principle which they uniformly exhibit. In every case he proposed a great leading principle, to which all his efforts were referable and subsidiary, which ran through the whole of his address, arranging, governing, and elucidating every portion. As the principle thus proposed was founded in truth and justice, whatever might be its application to the particular case, it necessarily gave to the whole of his speech an air of honesty and sincerity which a jury could with difficulty resist. To bring the case before him within the operation of this principle, was, indeed, frequently an arduous task, which Mr. Erskine nevertheless performed with consummate skill and delicacy. Even when, as in Paine's case, the accomplishment of that task was impossible, the adoption of a principle which he could conscientiously defend and enforce, gave him, as an advocate, incalculable advantages. In the cursory examination of Lord Erskine's speeches which has already been given, an attempt has

been made to point out, in each particular instance, the peculiar principle upon which the defence was rested.

The style of Lord Erskine's speeches may be regarded as a model for serious forensic oratory: it is clear, animated, forcible, and polished; never loaded with meretricious ornament, never debased by colloquial vulgarisms. It is throughout sustained in a due and dignified elevation. The illustrations which it exhibits are borrowed rather from the intellectual than the material world; and its ornaments are rather those of sentiment than of diction. It receives little assistance from the quaintness of similes or the brilliancy of metaphors; and is addressed rather to the reason and to the passions than to the taste and imagination of the hearer. It seldom displays any attempt at wit, or even at humour; though occasional instances of the latter quality are to be found in the Speeches.*

Although the speeches of Lord Erskine cannot be compared with those of Mr. Burke, for the varied exposition of philosophical principles in which those extraordinary productions abound; yet they not unfrequently display a profound acquaintance with human nature, and with the springs of human action. These reflections always arise naturally out of the subject which they enforce and illustrate. How admirable and how true are the following observations from the speech for the Council of Madras, and how worthy to be held in perpetual and cautious remembrance! "Some of the darkest and most dangerous prejudices of men arise from the most honourable principles of the mind. When prejudices are caught up from bad passions, the worst of men feel intervals of remorse to soften and disperse them; but when they arise from a generous though mistaken source, they are hugged closer to the bosom, and the kindest and most compassionate natures feel a pleasure in fostering a blind and unjust resentment." An attentive perusal of the Speeches will furnish

* Ante, p. 365.

innumerable instances of the same power of high philosophical reflection.

There probably never was an advocate who studied with nicer discrimination and more delicate tact the feelings of the jury. Even in the most impassioned passages of his oratory, when it might have been expected that his mind would have been wholly absorbed in his subject, he was intently watching the impression of his speech, as revealed in the countenances of the jury. Guided by this index, he regulated the character of his address; now rising, as he saw the feelings of the jury rise, into warm and eloquent displays of oratory; now subsiding, as he marked the passions of the jury subside, into cool and temperate argument. His speeches are full of observations, which record this singular faculty. In his speech on the trial of Lord George Gordon, he exclaimed, "Gentlemen, I see your minds revolt at such shocking propositions!"—In that for the Dean of St. Asaph, "Gentlemen, I observe an honest indignation rising in all your countenances on the subject, which, with the arts of an advocate, I might easily press into the service of my friend." On the trial of Paine, when the defendant's letter to the attorney-geral was read, "I see but too plainly," said Mr. Erskine, "the impression it has made on you who are to try the cause;" and in the course of the same trial he said, "I am not asking your opinions of the doctrines themselves; you have given them already, pretty visibly, since I began to address you." In the course of that trial, the impatience of the jury, and of one of them in particular, became so visible, that Mr. Erskine broke out into the following rebuke: "When the noble judge and myself were counsel for Lord George Gordon, in 1781, it was not considered by that jury, nor imputed to us by any body, that we were contending for the privilege of overawing the house of commons, or recommending the conflagration of this city. *I* am doing the same duty now which *my lord and I* then did in concert together;

and, whatever may become of the cause, I expect to be heard; conscious that no just obloquy can be or will in the end be cast upon me, for having done my duty in the manner I have endeavoured to perform it. Sir!" continued Mr. Erskine, addressing a refractory juryman, "I shall name you presently!" On the trial of Stockdale he said, "Gentlemen, I observe plainly, and with infinite satisfaction, that you are shocked and offended at my even supposing it possible that you should pronounce such a detestable judgment." Nay, even after he had ceased to address the jury, his eye was still fixed upon them, watching the variations of their countenances as they listened to the instructions of the judge. "I particularly observed," said he, in addressing the court of King's Bench, on the rule for a new trial on the Dean of St. Asaph's case,—"I particularly observed, how much ground I lost with the jury, when they were told from the bench, that even in Bushel's case, upon which I so greatly depended, the very reverse of my doctrine had been expressly established." Numerous other instances of this watchfulness might be collected from Mr. Erskine's speeches.

Among the characteristics of Lord Erskine's eloquence, the perpetual illustrations, derived from the writings of Burke, is very remarkable. In every one of the great state trials in which he was engaged he referred to the productions of that extraordinary person, as to a text-book of political wisdom, expounding, enforcing, and justifying all the great and noble principles of freedom and of justice. Upon one occasion he repeated from memory more than a page of those brilliant writings, which he always ushered in with high-sounding and even pompous panegyric. On the trial of Horne Tooke he cited a passage from Burke, denouncing it as dangerous in principle, but accompanying the denunciation with an encomium which proves how deeply he had studied, and how fervently he admired, the transcendent genius of the writer. "Let us try Mr. Burke's book by the same test. Though I have no doubt it was written with an honest intention, yet it contains, in my mind, a dangerous prin-

ciple, destructive of British liberty. What then?—ought I to seek its suppression?—ought I to pronounce him to be criminal who promotes its circulation? Far, far from that, I shall take care to put it into the hands of those whose principles are left to my formation. I shall take care that they have the advantage of doing, in the regular progression of youthful study, what I have done, even in the short intervals of laborious life; that they shall transcribe with their own hands from all the works of this most extraordinary person, and from the last among the rest,—the soundest truths of religion; the justest principles of morals, inculcated and rendered delightful by the most sublime eloquence; the highest reach of philosophy brought down to the level of common minds by the most captivating taste, the most enlightened observations on history, and the most copious collection of useful maxims from the experience of common life. All this they shall do, and separate for themselves the good from the evil, taking the one as far more than a counterpoise for the other." In his *View of the Causes and Consequences of the Present War with France,* Mr. Erskine again acknowledges his obligations to the genius of Burke. "When I look," says he, "into my own mind, and find its best lights and principles fed from that immense magazine of moral and political wisdom which he has left as an inheritance to mankind for their instruction, I feel myself repelled, by an awful and grateful sensibility, from petulantly approaching him."

It is greatly to be lamented that so few of Lord Erskine's miscellaneous speeches at the bar have been preserved; for, though necessarily inferior in magnificence of conception and in masterly execution to his great speeches in the State Trials, they would furnish invaluable models, in each particular case, of argumentative eloquence. A few of these speeches have been preserved in a single volume, edited by Mr. Ridgway, sufficient to induce a great regret, that a more copious collection of them has not been formed. Amongst the most remarkable of them are two which require to be more particularly noticed,

from the celebrity which Lord Erskine acquired in speeches of that class:—those in the cases of *Markham* v. *Fawcett*, and *Howard* v. *Bingham*, in actions for criminal conversation; in the former of which Mr. Erskine appeared for the plaintiff, and in the latter for the defendant. Such was the success of Mr. Erskine in cases of this kind, that he was almost invariably secured by the plaintiff, and only in three or four instances appeared as advocate for the defendant. In the first-mentioned case the sheriff's jury gave the plaintiff a verdict of seven thousand pounds, in the latter of five hundred. The extenuating circumstance in that case was, the attachment subsisting before marriage between the defendant and the wife of the plaintiff; a circumstance of which Mr. Erskine availed himself with his characteristic boldness and ability.

"If, therefore, Mr. Bingham this day could have by me addressed to you his wrongs, in the character of a plaintiff demanding reparation, what damages might I not have asked for him, and without the aid of this imputed eloquence, what damages might I not have expected? I would have brought before you a noble youth, who had fixed his affections upon one of the most beautiful of her sex, and who enjoyed hers in return. I would have shown you their suitable condition. I would have painted the expectation of an honourable union, and would have concluded by showing her to you in the arms of another by the legal prostitution of parental choice in the teeth of affection: with child by a rival, and only reclaimed at last, after so cruel and so afflicting a divorce, with her freshest charms despoiled, and her very morals, in a manner, impeached by asserting the purity and virtue of her original and spotless choice.—Good God! imagine my client to be plaintiff, and what damages are you not prepared to give him!—and yet, he is here as defendant, and damages are demanded against him. O monstrous conclusion!"

Throughout the whole course of his very distinguished professional career, Lord Erskine adhered with

constancy and fidelity to the political principles and engagements with which he began life. His ambition was of too noble a nature to look for its reward in honours meanly earned at the expense of integrity. It cannot be doubted, that many occasions occurred to him of bartering his political character for place or for emolument; but, undazzled by false splendour, he always refused to become a party to such an exchange. Nor did he ever suffer political considerations to prevent him from the due and just discharge of his professional duties, preferring, as in the case of Paine, the certain loss of office and advancement, to the sullying of his high professional character.

It would be inexcusable in this place to omit the following fine observations on the professional character of Lord Erskine, from the pen, it has been said, of a most distinguished person, himself a very illustrious ornament of the profession which was once adorned by the splendid genius and elevated by the lofty reputation of Erskine. "The professional life of this eminent person, who has of late years reached the highest honours of the law, is in every respect useful as an example to future lawyers. It shows that a base time-serving demeanour towards the judges, and a corrupt or servile conduct towards the government, are not the only, though, from the frailty of human nature and the wickedness of the age, they may often prove the surest, roads to preferment. It exalts the character of the English barrister beyond what in former times it had attained, and holds out an illustrious instance of patriotism and independence, united with the highest legal excellence, and crowned in the worst of times with the most ample success. But it is doubly important, by proving how much a single man can do against the corruptions of his age, and how far he can vindicate the liberties of his country, so long as courts of justice are pure, by raising his single voice against the outcry of the people and the influence of the crown, at the time when the union of these opposite forces was bearing down all opposition in parliament, and daily setting at nought the most splendid talents, armed with the most just cause.

While the administration of the law flows in pure channels; while the judges are incorruptible, and watched by the scrutinising eyes of an enlightened bar, as well as by the jealous attention of the country; while juries continue to know and to exercise their high functions, and a single advocate of honesty and talents remains, thank God! happen what will in other places, our personal safety is beyond the reach of a corrupt ministry and their venal adherents. Justice will hold her even balance in the midst of hosts armed with gold or with steel. The law will be administered steadily, while the principles of right and wrong, the evidence of the senses themselves, the very axioms of arithmetic, may seem elsewhere to be mixed in one giddy and inextricable confusion; and after every other plank of the British constitution shall have sunk below the weight of the crown, or been stove in by the violence of popular commotion, that one will remain, to which we are ever fondest of clinging, and by which we can always most surely be saved." *

The great truths of religion were early impressed by education on the mind of Lord Erskine, and they continued to exercise, throughout his whole life, a powerful influence over his feelings. It was not the language of the advocate when, on the trial of Paine, he made the following eloquent profession:— "For my own part, I have been ever deeply devoted to the truths of Christianity; and my firm belief in the Holy Gospel is by no means owing to the prejudices of education (though I was religiously educated by the best of parents), but has arisen from the fullest and most continued reflections of my riper years and understanding. It forms, at this moment, the great consolation of a life which, as a shadow, passes away; and without it, I should consider my long course of health and prosperity (too long, perhaps, and too uninterrupted to be good for any man), as the dust which the wind scatters, and rather as a snare than a blessing."

It must be admitted, that in the moral character of Lord Erskine there were failings, which more thoughtful

* Edinb. Review, vol. xvi. p. 127.

and prudent men would have avoided; and though it may be regretted, it cannot be a matter of surprise, that he did not exhibit a union of contradictory qualities, displaying at once the ardent temperament of genius, and the blameless and passionless conduct of less sensitive natures. It is unfortunately but too true, to use his own words, that "it is the nature of every thing that is great or useful in the animate and inanimate world to be wild and irregular; and we must be contented to take them with the alloys that belong to them, or to live without them." He was himself as deeply sensible as any one could be of his own failings, for the pardon of which he looked with confidence to the mercy-seat of God. In his speech on the trial of Stockdale, there is a passage which may be regarded as a commentary upon his own feelings. "Every human tribunal ought to take care to administer justice, as we look hereafter to have justice administered to ourselves: upon the principle on which the attorney-general prays sentence upon my client—God have mercy upon us!—instead of standing before him in judgment with the hopes and consolations of Christians, we must call upon the mountains to cover us; for which of us can present for Omniscient examination a pure, unspotted, and faultless course? But I humbly expect that the benevolent Author of our being will judge us, as I have been pointing out for your example. Holding up the great volume of our lives in his hand, and regarding the general scope of them, if he discovers benevolence, charity, and goodwill to man, beating in the heart, where he alone can look; if he finds that our conduct, though often forced out of the path by our infirmities, has been in general well directed, his searching eye will assuredly never pursue us into those little corners of our lives, much less will his justice select them for punishment, without the general context of our existence, by which faults may be sometimes found to have grown out of virtues, and very many of our heaviest offences to have been grafted, by human imperfection, upon the best and kindest of our affections. No, gentlemen, believe

me this is not the course of divine justice, or there is no truth in the Gospels of Heaven. If the general tenour of a man's conduct be such as I have represented, he may walk through the shadow of death, with all his faults about him, with as much cheerfulness as in the common paths of life, because he knows that, instead of a stern accuser, to expose before the Author of his nature those frail passages which, like the scored matter in the book before you, chequers the volume of the brightest and best spent life, his mercy will obscure them from the eyes of his purity, and our repentance blot them out for ever."

That Lord Erskine was not altogether free from the weakness of vanity, a weakness not unfrequently found in persons who, in other respects, possess the strongest minds, is evident even from his speeches. There is, upon various occasions, an obvious endeavour to introduce himself and his own actions to the notice of the audience; an ungraceful practice, which increased upon him in the later part of his life, and of which an instance may be seen in the debates in the house of lords of the 1st of March, 1806.* It has been said of Lord Erskine†, that "thoroughly acquainted with the world, he even condescended to have recourse to little artifices, pardonable in themselves, to aid his purposes. He examined the court the night before the trial, in order to select the most advantageous place for addressing the jury. On the cause being called, the crowded audience were, perhaps, kept waiting a few minutes before the celebrated stranger made his appearance; and when at length he gratified their impatient curiosity, a particularly nice wig, and a pair of new yellow gloves, distinguished and embellished his person, beyond the ordinary costume of the barristers of the circuit."

The demeanour of Lord Erskine in court was to the bench respectful, though never subservient; to the bar, kind, courteous, and engaging. It has been said, that during his long practice he was never known, but upon

* Cobbett's Parl. Deb. vol. vi. p. 247. † Annual Obituary, vol. ix. p. 57.

one occasion, to utter a harsh or rude word to those opposed to him, and that, in the single instance in which his temper mastered him, he made ample amends by a voluntary and instantaneous apology.*

In person, Lord Erskine possessed many advantages: his features were regular, intelligent, and animated, and his action is said to have been exceedingly graceful. His constitution was remarkably strong; and it was mentioned by himself in the house of lords †, as a singular fact, that during the twenty-seven years of his practice he had not been for a single day prevented in his attendance on the courts by any indisposition or corporeal infirmity.

SIR SAMUEL ROMILLY.

1757——1818.

Samuel Romilly was born on the first of March, 1757, in Frith-street, Soho, Westminster. His grandfather, a native of France, retired from that country on the revocation of the edict of Nantz, and settled in England, where his son, Peter Romilly, was brought up to the trade of a jeweller, and married a lady of the name of Garnault, the descendant of a French family: of this marriage the only children who attained the age of maturity were Thomas, Catherine, and Samuel, the subject of this memoir.

He was distinguished in his early youth by great vivacity and sensibility of temperament, the frequent companions of genius. Of his education little has been recorded; but he appears to have been principally indebted for his acquirements to his own exertions, aided by the suggestions and advice of his friend the Rev. John Roget, who subsequently married his only sister. Being originally destined for the profession of an attorney, he

* Annual Obituary, vol. ix. p. 59. † Cobbett's Parl. Deb. vol. vi. p. 247.

was placed by his father under a respectable gentleman in the six clerks' office; but in consequence of the strong predilection which he manifested for the bar, he became, in May, 1778, a member of Gray's Inn, and studied for some time in the chambers of Mr. Spranger. In a letter addressed to Mr. Roget, who was then travelling on the Continent, he gives the following account of the manner in which he passed his time:—"You ask me how I spend my time; in a manner so uniformly the same, that a journal of one day is a journal of all. At six or sooner I rise, go into the cold bath, walk to Islington to drink a chalybeate water (from which I have found great benefit), return and write or read till ten; then go to Mr. Spranger's, where I study till three, dine in Frith-street, and afterwards return to Mr. Spranger's, where I remain till nine. This is the history of every day, with little other variation than that of my frequently attending the courts of justice in the morning, instead of going to Mr. Spranger's, and of often passing my afternoons at one of the houses of parliament."

In another letter to the same correspondent, we find traces of that admirable spirit of benevolence which at a subsequent period directed all his exertions in public life. "Have you ever heard of a book published here some time since by a Mr. Howard, on the state of prisons in England and several other countries? You may conjecture from the subject that it is not a book of great literary merit; but it has a merit infinitely superior: it is one of those works which have been rare in all ages of the world, being written with a view only to the good of mankind. The author was some time ago a sheriff in the country, in the execution of which office numerous instances of abuses practised in prisons came under his observation. Shocked with what he saw, he began to enquire whether the prisons in the adjacent counties were on a better footing, and finding every where the same injustice prevail, he resolved, though a private individual, to attempt the reform of abuses which had become as general as they were shocking to humanity.

Accordingly, he made a visit to every prison and house of correction in England, with invincible perseverance and courage; for some of the prisons were so infected with diseases and putrid air, that he was obliged to hold a cloth steeped in vinegar to his nostrils during the whole time he remained in them, and to change his clothes the moment he returned. After having devoted so much time to this painful employment here, he set out on a tour through a great part of Holland, Germany, and Switzerland, to visit their prisons. What a singular journey!—not to admire the wonders of art and nature—not to visit courts and ape their manners; but to compare the misery of men in different countries, and to study the art of mitigating the torment of mankind! What a contrast might be drawn between the painful labour of this man, and the ostentatious sensibility which turns aside from scenes of misery, and, with the mocking of a few barren tears, leaves it to seek comfort in its own distresses!"

In the year 1781, Mr. Romilly passed several months on the Continent, visiting Switzerland, the borders of Italy, and the principal parts of France. At Paris, he became acquainted with several of the most distinguished men of letters of that day. His correspondence with his friends presents a lively picture of the impressions which he received from the state of society in France.

After spending the usual period of probation in unremitting and successful labour, Mr. Romilly was called to the bar on the second of June, 1783. In a letter written at this period, he has described the feelings with which he contemplated the entering upon his profession, —feelings which betray the nervous and susceptible temperament with which he had to struggle. "The nearer I approach the term, which I formerly so often wished for, the more I dread it. I sometimes lose all courage, and wonder what fond opinion of my talents could ever have induced me to venture on so bold an undertaking: but it often happens (and I fear it has been my case),

that men mistake the desire for the ability of acting some very distinguished part."

In another letter we find the early traces of that noble and pure ambition which, throughout the whole of his public life, elevated the character of Sir Samuel Romilly. "It would seem, my dear Roget, by your last letter, that you thought I had affected doubt of succeeding in the way of life on which I am to enter, in order to draw from you such praises as might encourage me in my pursuit. I assure you that I had no such wish, and that what I wrote to you was but a faithful transcript of what I felt. Could I but realise the partial hopes and expectations of my friends, there would be no doubt of my success, almost beyond my wishes; but in myself I have a much less indulgent censor, and in this, perhaps, alone, I cannot suffer their judgment to have equal weight with my own. I have taught myself, however, a very useful lesson of practical philosophy, which is, not to suffer my happiness to depend upon my success. Should my wishes be gratified, I promise myself to employ all the talents and all the authority I may acquire for the public good — *Patriæ impendere vitam.* Should I fail in my pursuit, I console myself with thinking that the humblest situation in life has its duties, which one must feel a satisfaction in discharging; that at least my conscience will bear me the pleasing testimony of having intended well; and that, after all, true happiness is much less likely to be found in the high walks of ambition than in the *secretum iter et fallentis semita vitæ.* Were it not for these consolations, and did I consider my success at the bar as decisive of my future happiness, my apprehensions would be such that I might truly say, *Cum illius diei mihi venit in mentem, quo mihi dicendum sit, non solum commoveor animo, sed etiam toto corpore perhorresco.*"

For several years the anticipations of Mr. Romilly seemed to be but too correct. It was truly said by Lord Erskine *, when speaking of advancement in his

* Cobbett's Parl. Deb. vol. vi. p. 427.

own profession, that "success in life often depended more upon accident and certain physical advantages, than upon the most brilliant talents and the most profound erudition." Unfortunately, those physical advantages were wanting to Mr. Romilly at the commencement of his professional life. A nervous and diffident temperament deprived him in public of the free use of his powerful faculties, and prevented him from displaying the real extent of his skill and acquirements. For four or five years he continued to attend, with little practice or emolument, the courts of equity at Westminster, the midland circuit, and the Warwick sessions. In one of his speeches in the house of commons he has alluded, in answer to the charge of being a mere theorist, to the practice which he had seen in courts of law:—"Whatever may be the opinion entertained of my labours, I can scarcely think that my honourable friend is serious in his opinion that all practical legislative wisdom has quitted this great city, and that we in the court of chancery are a sort of easy speculative *dilettanti* lawyers, wholly incompetent to form any sound opinion upon criminal legislation. That I may be mistaken I am very ready to admit; but if I am really as ignorant as my honourable friend supposes, my ignorance must be most unpardonable. The subject of criminal law has always been most interesting to me: it has more or less through life been my particular study. For fifteen years I constantly attended our courts of criminal law; and although my researches may not have been very successful, I am in possession of notes by which my honourable friend may be convinced I was not wanting in diligence, and that my endeavours to collect information were not confined to the collection of a few scattered remarks in our superior courts upon the circuit, but extended to the courts of quarter-sessions, where I had the honour for many years to practise." * At length the assiduity of Mr. Romilly was rewarded by a moderate share of encouragement, and by the gradual subsiding of those

* Speeches, vol. i. p. 341.

nervous feelings with which he had been harassed. In 1791, he had acquired considerable practice as a junior counsel; and in 1797 he began to be known as a leader.

The late Marquis of Lansdowne, to whose friendship and patronage, thirty years earlier, Mr. Dunning had been so much indebted, had the acuteness to discover, and the kindness to encourage, the rising talents of Mr. Romilly. He was a frequent guest and visitor at the mansions of Lord Lansdowne in London and in Wiltshire, where he attracted the notice and won the friendship of many of the most distinguished persons of his day. Here, too, he first became acquainted with a lady, the eldest daughter of Francis Garbett, Esq., of Knill-Court, in the county of Hereford, to whom he was afterwards married.

The promotion of Sir John Scott, the attorney-general, to the chief justiceship of the common pleas, in the year 1799, added greatly to the practice of Mr. Romilly, who, in the following year, was appointed one of his majesty's counsel. From this period he took that distinguished station in the court of chancery, which he held for nearly twenty years.

But as yet he had never ventured into political life. The cares of his profession, and the securing of his own independence, had hitherto wisely claimed all his attention. At length, however, that noble field of exertion, which public life in this country offers, was opened to him, and ample means were afforded him of carrying into effect the great and useful designs which he had so long and so fondly cherished. On the formation of the new ministry, in 1806, he was appointed his majesty's solicitor-general, and was immediately returned to parliament as one of the members for Queenborough. On accepting office, he received the customary honour of knighthood. Soon after having taken his seat, Sir Samuel was appointed one of the managers on the impeachment of Lord Melville; a duty which he performed with extraordinary ability.

No one ever entered the house of commons better

prepared to perform the high duties incumbent on him than Sir Samuel Romilly. His habits of reflection, his extensive acquirements, his acquaintance with the laws and constitution of his country, his indefatigable industry, his clear philosophical intellect, his high personal character, and, lastly, but chiefly, the purity of his ambition, all qualified him to act a most distinguished part in public life. In entering upon the duties of his new station, Sir Samuel Romilly well knew that, in order to give effect to the great and useful designs which he contemplated, it was necessary for him to select some particular object, to the attainment of which his efforts might be principally directed. He felt that, however numerous might be the claims upon his patriotism or his humanity, it was necessary to make some one great question the principal end of his exertions, leaving it to others to pursue with the same diligence the various other objects, to the acquisition of which he could only hope to extend occasional assistance. In making this selection, Sir Samuel Romilly was fortunately induced to devote himself to the amelioration of our criminal code; a subject which had, from an early period of his life, interested his feelings and occupied a considerable portion of his attention. It has been sometimes objected to him, that he did not rather apply himself to the correction of those abuses, which had so long cast a discredit upon the court in which he practised; but it ought surely never to be regretted that he preferred the nobler labour of reforming a code, the impolitic severity of which had for centuries disgraced the institutions of our country. That portion of the community which is affected by our civil polity are never without the means of making their complaints heard; but the poor, the destitute, the uninformed, and the misled, the objects upon whom our criminal jurisprudence operates, have no voice to protest against the severities which the legislature may please to denounce. To watch over the interests of this wretched and degraded portion of society; to become the friend of those against whom every other hand was raised, and the protector

of those who were abandoned, even by themselves, seemed to Sir Samuel Romilly a duty which claimed a decided pre-eminence.

Some time, however, elapsed before he found himself prepared to bring forward the various measures which he had contemplated for the reform of the criminal laws. In the mean while he distinguished himself by the part he took in some important questions, with which the interests of freedom and of humanity were closely connected. In the debates on the abolition of the slave trade, and on the alteration of the mutiny bill, he spoke at some length, and he introduced, during the same session, a bill, which subsequently passed into a law (46 G. 3. c. 135.), for the amendment of the bankrupt laws; and also a bill, which was lost, for making freehold estates assets for the payment of simple contract debts. In the spring of 1807, on the dissolution of the Whig administration, he retired from office.

On the 18th of May, 1808, Sir Samuel Romilly introduced a bill to repeal the statute of 8 Eliz. c. 4. by which the punishment of death was inflicted for the offence of privately stealing from the person. With some amendments, this bill passed into a law. His next legislative effort was, a further improvement of the bankrupt law, by introducing the provisions of the statute 49 G. 3. c. 121. In the course of the same session, he took a considerable interest in the discussions which followed the disclosure of the conduct of the Duke of York.

In the session of 1810, Sir Samuel Romilly, in the prosecution of his humane design to soften the severity of the penal code, introduced three bills, to repeal the statutes 10 and 11 W. 3., 12 Ann., and 24 G. 2., making the privately stealing in a shop goods of the value of five shillings, or in a dwelling-house, or on board a vessel in a navigable river, property of the value of forty shillings, capital felonies. His speech on this occasion he afterwards published, with some additions, under the title of "Observations on the Criminal Law of England."

Notwithstanding the able arguments with which Sir Samuel Romilly supported the principle of these bills, and the industry with which he collected, and the clearness with which he expounded, a vast body of facts in confirmation of his arguments, all the bills were lost, the first in the lords, and the second in the commons, the third being postponed, and at length withdrawn. In the following year, however, Sir Samuel Romilly had the satisfaction of carrying through two bills, to abolish the punishment of death for stealing from bleaching grounds; and in 1812 he succeeded in procuring a repeal of the act of Elizabeth, making it capital in soldiers and mariners to be found wandering about the realm without a pass.

On the dissolution of parliament, in the year 1812, Sir Samuel Romilly was invited by a number of respectable gentlemen to become a candidate for the representation of Bristol. This invitation he accepted, and though defeated by a coalition between the forces of two of his opponents, he counted nearly seventeen hundred votes. He was subsequently returned to the new parliament for the borough of Arundel.

It is impossible, within the limits of this brief memoir, to detail the various efforts made by Sir Samuel Romilly to advance the great interests of freedom and humanity. No opportunity was neglected by him of introducing and recommending to the legislature the amendment of the criminal law; and upon many other important questions of foreign and domestic policy he was not silent. The alien act, the persecutions of the French protestants, the game laws, the suspension of the habeas corpus act, the seditious meetings bill, the state of Ireland, the subject of lotteries, Lord Sidmouth's famous circular, the employment of spies and informers, the state trials in Scotland, the imprisonments for libel, the state of slavery in our colonies: — all these important topics in turn engaged his attention. In many instances, during the debates which arose on these subjects, it was his misfortune to witness the triumph of

those who opposed the measures he had so greatly at heart. But the good seed which he and his fellow-labourers sowed was not cast upon a barren and thankless soil. Within the short period which has elapsed since the death of Sir Samuel Romilly, several of the great improvements which he so zealously promoted have been carried into effect.

The statute of William III., inflicting the punishment of death for the offence of privately stealing in a shop to the value of five shillings, was, at the commencement of the present reign, at length repealed *, and transportation or imprisonment substituted, though the house of lords had repeatedly rejected the repealing statute. The statute of George II., making it capital to steal goods to the value of forty shillings on board a vessel in a navigable river, was also repealed about the same time †, and transportation or imprisonment substituted. More recently, the value of the goods stolen in a dwelling-house, necessary to render the offence capital, has been raised from forty shillings to five pounds. ‡ These ameliorations Sir Samuel Romilly in vain endeavoured to effect. The system of raising money by way of lotteries, which Sir Samuel opposed, as materially conducing to the depravation of public morals, has been abandoned. The practice of placing spring guns for the protection of game, which he reprobated as both cruel and illegal, has been forbidden by statute. A general and effective revision of the criminal law has been commenced; and, lastly, the great question of catholic emancipation, which was ever near the heart of Sir Samuel Romilly, has been finally put to rest. In short, throughout all our institutions, a more liberal spirit has become visible, the growth and progress of which are to be attributed to the efforts of the men, who, like Sir Samuel Romilly, have never ceased, under all circumstances, to advocate the cause of freedom and of humanity.

* 1 G. 4. c. 117. 4 G. 4. c. 53. 7 & 8 G. 4. c. 29. § 15. † 4 G. 4. c. 53.
‡ 7 & 8 G. 4. c. 29. § 12.

On the dissolution of parliament, in June 1818, Sir Samuel Romilly was put in nomination as one of the candidates for Westminster; and, after a most arduous contest, in which he personally took no part, his name was placed at the head of the poll; the numbers being for Sir S. Romilly, 5339; for Sir Francis Burdett, 5238; and for Sir Murray Maxwell, 4808. In this parliament he did not live to take his seat. The following distressing narrative is from the pen of Mr. Peter, the author of the Memoir prefixed to the Speeches of Sir S. Romilly.

"The declining health of Lady Romilly, which had been to her husband for several months a source of uneasiness and anxiety, at length excited in his bosom the most serious alarms. During a residence of nearly two months at Mr. Nash's seat in the Isle of Wight, where he had taken her for the benefit of a milder air, his mind continued in a state of unceasing agitation — fluctuating at each turn of her disorder between alternate tides of hope and despair. In a letter to his friend Mr. Dumont, of the 27th of September, he says, 'Since I last wrote to you, Anne has been worse, and was certainly considered by both her medical attendants as being in some danger. She is at present a little better; but for myself I still apprehend the worst. I take care to let neither her nor the poor children see the anxiety I feel; but it costs me a good deal. With all this, do not suppose that I have not quite resolution enough to undergo every thing, and to preserve my health for my children's sake.'

"A few days after the date of this letter, Mr. Dumont arrived at Cowes, where he found Lady Romilly so much better as to be able to spend two or three hours each day in the society of her friends. This temporary improvement, however, was soon followed by a severe relapse, and by several days of acute suffering; during which the anguish of her husband could only be equalled by the pious fortitude and resolution with which he endeavoured to suppress his feelings. Though for a long period he was either a stranger to sleep, or had his

sleep disturbed by the most terrific dreams; though at times he believed his faculties to be impaired, and began even to entertain fears of mental derangement, he still recollected the duties which he owed to his family, to his country, and to his Creator. To the last moment of his reason, he continued to struggle with the sorrows which were overwhelming him. Whatever time remained to him from his attendance in the sick chamber of his wife, was devoted to his children and surrounding friends. With Mr. Dumont, in particular, he frequently held the most intimate and unreserved conversations; entertaining him with prospects of the future, and with plans for the education and establishment of his children in life.

"About the middle of October, his sister, whom he tenderly loved, had come with her daughter to the Isle of Wight, at his own express desire, and was followed by the two sisters of his wife; but, though grateful for this proof of their kind attention and regard, he met them without a tear, or any visible emotion. Lady Romilly died during the night of the 29th of October; but the event was not communicated to her husband until the following morning. He heard it with apparent resignation, and without any violent effusions of grief. On the same day he was removed by his anxious friends from the scene of his sorrows, and arrived in London, by easy stages, on the 1st of November. During his journey he had been frequently much agitated, and as he approached home his feelings became more violent. On one of these occasions, as he was shutting his eyes and wringing his hands, Mr. Dumont, who had accompanied him from the Isle of Wight, took the hand of his daughter, and placed it in his; upon which, opening his eyes, and casting on his friend a look expressive of gratitude and affection, he tenderly embraced his daughter.

"On his arrival at his residence in Russell Square, he made repeated but ineffectual efforts to compose his mind; and throwing himself on a sofa, joined his hands

together for some moments, as if in a state of prayer. He was now apparently calm; but his tranquillity was more frightful to his friends than even his former violence: it had the aspect of a man dying from some internal wound. Dr. Roget, who had attended his uncle from the commencement of his illness, and watched over his couch with all the pious care and devotion of a son, was, soon after their arrival in London, joined by Dr. Marcet, and on the following morning by Dr. Babington. But their efforts were vain: long-suffering had suspended the faculties of their unhappy patient. His mind became deranged — his heart was broken — and in the violence of phrensy he terminated his own existence.

"In person," continues his biographer, Mr. Peter, "Sir Samuel Romilly was tall and justly proportioned, with a countenance regular and pleasing; but tinged with deep shades of thought, and susceptible of the greatest or tenderest emotions. His manners were distinguished by singular modesty, unaffected simplicity, and the kindest attention and regard to the wishes and feelings of others. His habits were temperate, studious, and domestic. No man ever indulged less in those pursuits which the world calls pleasure. He rose regularly at six o'clock; and was occupied, during the greater part of the day, and frequently to a late hour at night, either in study or laborious attendance to his professional and parliamentary duties. What little intervals of leisure could be snatched from his toils he anxiously devoted to domestic intercourse and enjoyments. Moderate in his own expences, he was generous, without ostentation, to the wants of others; and the exquisite sensibility of his nature was never more strikingly displayed than in the fervent zeal with which his professional knowledge was always ready to be exerted for the destitute and oppressed, for those who might seem, in their poverty, to have been left without a friend. Even to the last, when sinking under the weight of domestic affliction, when anticipating as its probable result a wretched life

of mental malady and darkness, he was still intent on the welfare and happiness of those around him. The religion of Sir Samuel Romilly was, like his life, pure, fervent, and enlightened. Unclouded by superstition or intolerance, it shone forth in pious gratitude to God, and in charity to all mankind."

There is no wisdom more to be desired than that which enables us to estimate, at their true relative value, the various objects of human ambition. The highest and noblest minds, deficient in this knowledge, have too often wasted or abused their powers, by devoting them to the vainest or the wickedest purposes. The sanction of public applause to actions indifferent or injurious, has misled many from the pursuit of purer and more excellent objects; and the world has been justly repaid for its false and dangerous adulation, by the scourging vices of those whose ambition it has depraved. Some men, indeed, with a deeper insight into their own nature, and into the true ends and aims of their being, have proposed to themselves a higher and nobler course, and have found no object worthy of their ambition, unconnected with the happiness, with the improvement, and with the virtue of mankind. To reform and to instruct the human mind, to purify it from the mean and wicked passions which debase it, to purge it of its weaknesses and its errors, and to fill it with all noble views and aspirations, has, in every age, been the object of that small band of good and virtuous men, the

> "Salt of the earth, the virtuous few
> Who season human kind."

Amongst these truly excellent and exalted persons Sir Samuel Romilly has every claim to be ranked. He was, in the highest sense of the word, a philanthropist, loving mankind with wise and constant affection, not misled by any false sensibility, yet tremblingly alive to their best and truest interests. Without displacing for a moment the beautiful affections of domestic life, the welfare of his fellow creatures ever lay next to the heart of Sir Samuel Romilly; and the feelings which in weaker and meaner

minds extend only round the small circle which blood or friendship draws, were in him diffused with undiminished warmth over the wide orbit of human existence.

How noble and pure was the ambition of Sir Samuel Romilly we may learn from the following beautiful passages, where he has explained the motives by which he was actuated in his proposed reforms of the criminal law. "It was not," said he, "from light motives, it was from no fanciful notions of benevolence, that I have ventured to suggest any alteration in the criminal law of England. It has originated in many years' reflection, and in the long-established belief that a mitigation of the severe penalties of our law will be one of the most effectual modes to preserve and advance the humanity and justice for which this country is so eminently distinguished. Since the last session of parliament, I have repeatedly reconsidered the subject: I am more and more firmly convinced of the strength of the foundation upon which I stand; and even if I had doubted my own conclusions, I cannot forget the ability with which I was supported within these walls; nor can be insensible to the humane and enlightened philosophy by which, in contemplative life, this advancement of kindness has been recommended. I cannot, therefore, hastily abandon a duty which, from my success in life, I owe to my profession; which, as a member of this house, I owe to you and to my country; and which, as a man blessed with more than common prosperity, I owe to the misguided and unfortunate.

"Actuated by these motives, it is not to be imagined that I shall be easily discouraged by any of the various obstacles so commonly, and perhaps with propriety, opposed to every attempt to alter an established law: upon such a resistance I calculated, but am not to be deterred. I knew that my motives must occasionally be misunderstood by many, and might possibly be misrepresented by others. I was not blind to the road where prudence pointed to preferment; but I am not to be misled from comforts which no external honours can

bestow. I have long thought that it was the duty of every man, unmoved either by bad report or by good report, to use all the means which he possessed for the purpose of advancing the well-being of his fellow-creatures: and I know not any mode by which I can so effectually advance that well-being, as by endeavouring to improve the criminal laws of my country. It has been insinuated, that, indebted as I am to the law, commendation rather than censure ought to be expected from me; and it has been asserted, that under the pretext of proposing apparently immaterial alterations, my real object is to sap and undermine the whole criminal law of England. Such insinuations and assertions have not, I am well aware, been made by any of my honourable and learned friends by whom I am now surrounded, and who have witnessed my whole professional life; but they have been made, and, I must of course suppose, have been really believed."*

In another speech on the Catholic question, Sir Samuel Romilly has, in the same lofty spirit of philosophical benevolence, described the true objects of human ambition:—

"What! is it no hardship to the catholics of Ireland to be told, 'You may enter, indeed, into professions which are highly honourable to others, but by *you* they must be followed merely as the means of gaining a subsistence. As to all the proud objects of honourable ambition; as to every thing which can ennoble your labours in your own eyes and in the eyes of others; as to the hope of ever rendering yourselves eminently useful to mankind, or gloriously distinguishing yourselves by services to your country; as to the prospect of establishing a reputation which shall live in the memory of a grateful posterity, of becoming an example which shall serve to kindle the virtues of a future generation, and of leaving a name which your children shall never hear pronounced but with a glow of honest pride and pious exultation; as to all these animating hopes and

* Speeches, vol. i. p. 317.

prospects, they must be by *you* for ever relinquished. You may toil on in the humble situation where gain must be your only object; you may see honours and distinctions distributed to those around you; but you must be for ever precluded from them. That profession which to your colleagues leads to the most eminent station, shall be to you an unhonoured though profitable trade.'" *

The eulogy pronounced by Sir S. Romilly on Mr. Horner is full of the same noble sentiments, and well expresses the motives by which his own life had been guided. "Of all the estimable qualities which distinguished his character, I consider as the most valuable that independence of mind which in him was so remarkable. It was from this feeling, and from a just sense of its importance, that at the same time that he was storing his mind with the most various knowledge on all subjects connected with our internal economy and foreign politics, and that he bore a conspicuous and most successful part in all the great questions on which it was his duty as a legislator to form or to express an opinion, he laboriously devoted himself to all the painful duties of his profession. Though his success at the bar was not at all adequate to his merits, yet he steadily persevered in his labours, and seemed to consider it as essential to his independence that he should look forward to his profession alone for the honours and emoluments to which his extraordinary talents gave him so just a claim.

"But I should very ill express what I feel upon this occasion, were I to consider the extraordinary qualities which Mr. Horner possessed, apart from the ends and objects to which they were directed. The greatest eloquence is in itself but an object of vain and transient admiration. It is only when ennobled by the uses to which it is applied, when directed to great and virtuous ends, — to the protection of the oppressed, to the enfranchisement of the enslaved, to the extension of knowledge, to dispelling the clouds of ignorance and

* Speeches, vol. i. p. 393.

superstition, to the advancement of the best interests of the country, and to the enlarging the sphere of human happiness, — that it becomes a national benefit and a public blessing. It is because the powerful talents, of which we are now deprived, have been uniformly exerted in the pursuit and promotion of such objects, that I consider our loss as one of the greatest which, in the present state of the country, we could possibly have sustained." *

Amongst all the qualities which combine to form a great and powerful character, there is none more strikingly excellent than that constancy of purpose which, through difficulties and defeats, still presses onward to its object. The mind inspired and strengthened by this lofty principle regards every obstacle that would turn it from its settled purpose, not only without dismay, but with exultation, as conferring additional honour upon the struggle which it is so well prepared to sustain. Maturely weighing the means which it possesses for the accomplishment of its great designs, it finds in the strength of its own unswerving resolution the confidence and the promise of success. The misfortunes, the failures which would deter weaker minds, are turned into instruments of power; and, as difficulties multiply around, they but unite more firmly the energies before which they are destined at length to yield. A man of the most ordinary powers, animated by this principle, will perform a giant's labours; while without it the noblest intellect may expend itself in the triflings of a dwarf. Throughout the whole of his life Sir Samuel Romilly was remarkable for the earnest perseverance with which he applied himself to the accomplishment of his designs. In the various attempts which he made to improve the criminal code, his resolution was frequently put to the severest test. Opposition, neglect, ridicule, and reproach, conspired to deter him from his great and excellent purposes; but never, for a moment, made an impression upon his firm and resolute mind. In one of

* Speeches, vol. ii. p. 167.

his speeches on the subject of the criminal law, he manifests that unbroken energy of character which, even under the pressure of defeat, never doubts of success.

"From the spirit which I have seen, I shall not be surprised, and I certainly will not be deterred, by any vote of this night. I am not so unacquainted with the nature of prejudice as not to have observed that it strikes deep root; that it flourishes in all soils, and spreads its branches in every direction. I have observed also, that, flourish as it may, it must, by laws sacred and immutable, wither and decay after the powerful and repeated touch of truth. It was my lot to hear in parliament a negative upon that bill which was intended to deliver this enlightened nation from the reproach of the cruel and disgusting punishment of burning women alive. It was my lot, again and again, to witness in this house the defeat of those wise and humane exertions which were intended to rescue Englishmen from the disgrace of abetting slavery. But the punishment of burning is no more, and Africa is free. No resistance, no vote of this night, shall prevent my again appealing to the good sense and good feeling of the legislature and of the country. If I live another year, I will renew this bill, with the bill for repealing the punishment of death for stealing a few shillings; and, whatever may be my fate, the seed which is scattered has not fallen upon stony ground." *

The sentiments of Sir Samuel Romilly on the subject of parliamentary reform are explicitly stated in the following passages: —

"I give this vote, not from any vain hope of popularity, — not from an expectation of being able to gratify those who now influence the public opinion on this subject —but from a sincere and deep-rooted conviction that some reform is necessary. I am a friend neither to universal suffrage nor to annual parliaments. I even doubt whether I am prepared to go all at once so far as to make the right of voting at elections coextensive with taxa-

* Speeches, vol. i. p. 478.

tion; but for some reform, for some material change in the present system, I am, and long have been, a zealous advocate. At an early period of my life, long before I had a seat in parliament, when, from the gallery of this house I first witnessed its deliberations, and heard Mr. Pitt, with all the generous ardour of youth, and with the same eloquence which distinguished his maturer age, pleading the cause of parliamentary reform, I became sensible to the necessity of that measure. The impressions which were then made on my mind have never been effaced. Subsequent reflection and observations, more particularly since I have myself become a member, have only served to confirm them." *

* Speeches, vol. ii. p. 193.

NOTES.

NOTE 1. p. 9. — The extent of the mischief occasioned by these courts may be learned from the fact that there were 2000 causes depending in them at one time. Coke mentions, in this place, the amount of business in the court of chancery at that time: — 95 causes to be heard in Easter Term, and 72 in Trinity.

NOTE 2. p. 10. — Of the correctness of this assertion James gave an excellent proof on his journey from Scotland, in ordering a cutpurse to be executed without trial — *Stow*, 821.

NOTE 3. p. 15. — Mr. Hume has asserted, that during this reign the issuing of proclamations with the effect of laws was "established by uniform and undisputed practice, and was *even acknowledged by lawyers*, who made, however, this difference between laws and proclamations, that the authority of the former was perpetual, while that of the latter expired with the sovereign who emitted them." Not only have we the opinion of the judges as above given, in direct opposition to this statement, but even the admission of James himself in a "Proclamation signifying His Majesty's pleasure touching some former Proclamations." "So, although we know that by the constitution of the frame and policie of this kingdom, royal proclamations and ordinances *are not of equal force*, nor in the like degrees with our laws," &c. — *Booke of Proclamations*, p. 235.

NOTE 4. p. 17. — Some years before, Coke had refused to deliver his opinion in writing. "The lord chancellor desired that we should put our resolutions in writing; to which I answered, that the judges were not used to put their resolutions in writing, but that if the attorney or solicitor came to us, as the ancient use hath been to our predecessors, we will deliver our opinions to them *ore tenus*, but not in writing." — 12 *Rep.* 132. See also *Fortescue's Rep.* 389.

That Coke's opinion was against the Court may be gathered from *Bacon's Letters* (*by Birch*), p. 56.

NOTE 5. p. 19. — For the history of these dark transactions, see the different trials in the second volume of the *State Trials*; the article *Coke* in the *Biog. Brit.*; the pamphlet of *Truth brought to Light*, &c.; the *Secret History of the Court of King James*, and the *Retrospective Review*, vol. vii. p. 29.

NOTE 6. p. 28. — In a letter to the king he says, "To conclude this point, after I had received by a former letter of his lordship (Buckingham) knowledge of his mind, I think Sir Edward Coke himself the last time he was before the lords might particularly perceive an alteration in my carriage." — *Bacon's Letters, by Birch*, p. 152.

NOTE 7. p. 28. — If the reader wishes for more information on this subject, he may consult Mr. D'Israeli's *Curiosities of Literature*.

NOTE 8. p. 28. — See a witticism of Gondomar, the Spanish ambassador, on Sir Edward Coke and his lady. — *Howell's Letters*, 103. 7th ed.

NOTE 9. p. 29. — See the *Proceedings and Debates of the House of Commons in* 1620, vol. i. pp. 65. 73., &c. Sir Edward thus commenced one of his speeches against Sir Francis Michell the monopolist: —

"Integer vitæ scelerisque purus
Non eget Mauri jaculis neque arcu
Non venenatis, &c.
Michell pharetra!"

"Michell is *vir multarum artium*, he hath played in many parts," &c.

NOTE 10. p. 40. — Perhaps his treatment of Dr. Cowell, the learned civilian, may be considered an exception to this observation. Cowell had depreciated the merit of *Littleton's Tenures*, and had been employed by Bancroft to prepare the *Articuli Cleri*, or charges against the common law courts. Coke not only attacked his book, *The Interpreter*, but is said to have taken all occasions to affront him, calling him in derision, "*Dr. Cow-heel.*" — *Biog. Brit.* art. *Cowell*. James issued a proclamation, evidently penned with his own hand, against Cowell's Interpreter. The introduction to this proclamation is singularly amusing.

NOTE 11. p. 41. — That Coke could not or would not appreciate the genius and learning of Bacon appears from the following anecdote: — Bacon presented to him a copy of his *Novum Organum* with the title *Instauratio Magna*, and containing a device of a ship sailing. Upon the title-page Coke has written, —

Edw. C. ex dono auctoris.
Auctori consilium.
Instaurare paras veterum documenta sophorum,
Instaura leges justitiamque prius.

And over the device, —

It deserveth not to be read in schools,
But to be freighted in the ship of fools.

The volume still remains at Holkham.

NOTE 12. p. 43. — Where no other authority is mentioned, this Memoir is founded on the life of Selden by Dr. Aikin, which is principally derived from the life prefixed to the edition of Selden's works by Dr. David Wilkins.

NOTE 13. p. 44. — In the opinion of his friend Archbishop Usher, this was Selden's "best book." *Mem. of Evelyn*, vol. i. p. 294. See Bishop Nicholson's opinion of this work, *English Hist. Library*, p. 22. ed. 1696. It was translated into Latin and printed at Francfort in 1696.

NOTE 14. p. 50. — For the speeches and arguments of Selden see *Howell's State Trials*, vol. iii. pp. 16. 78. 94. 175. 236. 264., and the 7th and 8th vols. of the *Old Parliamentary History*.

NOTE 15. p. 51. — Another edition of this work was published at Oxford in 1676, by Dr. Prideaux, and by Maittaire in 1722. It appears that Evelyn was the person who prevailed upon Mr. Henry Howard to bestow these valuable monuments of antiquity upon the University of Oxford. *Evel. Mem.* vol. i. p. 409.

NOTE 16. p. 56. — For an account of his interment see *Wood, Ath. Oxon.* vol. ii. col. 184. The master of the Temple performed the service, and Archbishop Usher preached the funeral sermon.

NOTE 17. p. 56. — It is said by Evelyn in a letter to Pepys, that there is a fragment of Selden's library at the Middle Temple. *Evelyn's Mem.* vol. ii. p. 247. Anthony Wood arranged Selden's library at the Bodleian. He "laboured several weeks with Mr. Thos. Barlow and others in sorting them, carrying them up stairs, and placing them. In opening some of the books they found several pair of spectacles, which Mr. Selden had put in and forgotten to take out." *Life of Wood*, p. 182. See in the same place, the conditions on which the library was presented to the Bodleian. In the title or first page of all his books Selden used to write his motto ετει σαοτος εν ελευθεριαι. — *Wood, Ath. Ox.* p. 180.

NOTE 18. p. 56. — They were marked S to distinguish them from the Arundel Marbles which were marked H. See *the Life of Anth. Wood*, p. 146.

NOTE 19. p. 57. — Oct. 1650, Letters in *Parr's Life of Usher*. Meric Casaubon sold parts of his father's MSS. to Sir Edward Coke. See *Evelyn's Mem.* vol. ii. p. 247.

NOTE 20. p. 59. The *Table Talk* was published after Selden's death and dedicated to his executors.

NOTE 21. p. 59. — Where no authority is cited, this Memoir is drawn from *The Life and Death of Sir M. Hale*, by Bishop Burnet.

NOTE 22. p. 61. — "He said that he came from the university with some aversion for lawyers, and thought them a barbarous set of people, unfit for any thing but their own trade; but having occasion to speak about business with Serjt. Glanville, he found him of such prudence and candour, that from that time he altered his apprehensions, and betook himself to the study of the law." — *Seward's Anecdotes*, vol. iv. p. 416.

NOTE 23. p. 61. — "He said that he studied 16 hours a day for the first two years after he came to the inns of court, but almost brought himself to his grave, though he was of a very strong constitution; and after reduced himself to eight hours, but that he would not advise any body to so much. That he thought six hours a day with attention and constancy was

sufficient; that a man must use his body as he would his horse and his stomach, not tire him at once, but rise with an appetite." — *Seward's Anecdotes*, vol. iv. p. 416.

NOTE 24. p. 62. — Noy was a very industrious and learned man. "With infinite pains," says Howell in his Letters, "he came to his knowledge of the law, but I never heard a more pertinent anagram than was made of his name William Noy, *I moyl in law*." When Charles I. was anxious to find a man whose principles and talents might fit him for the place of his attorney-general, he applied to Noy, who after some importunity was prevailed upon to accept the office. He affected great moroseness of manner, but was not inaccessible to flattery; and the courtiers worked upon this foible so successfully that he was won over to a participation in all the worst measures of the government, and rendered himself particularly obnoxious by his zeal in the matter of ship-money. See *Clarendon's Rebellion*, vol. i. According to Howell, Noy "left an odd will, which was short and in Latin. Having bequeathed a few legacies, and left his second son one hundred marks a year, and 500*l.* in money to bring him up to his father's profession, he concludes — reliqua meorum omnia primogenito meo Edvardo dissipanda (nec melius unquam speravi ego), I leave the rest of all my goods to my first-born Edward, to be consumed or scattered, for I never hoped better."

NOTE 25. p. 62. — This volume is now in the library of Lincoln's Inn, among the MSS. bequeathed to that society by Hale.

NOTE 26. p. 62. — Vaughan was also one of the early friends of Clarendon, who has left the following character of him: — "John Vaughan was then a student of the law in the Inner Temple, but at that time indulged more to the politer learning, and was in truth a man of great parts of nature and very well adorned by arts and books, and so much cherished by Mr. Selden that he grew to be of entire trust and friendship with him, and to that owed the best part of his reputation: for he was of so magisterial and supercilious a humour, so proud and insolent a behaviour, that all Mr. Selden's instructions, and authority and example, could not file off that roughness of his nature, so as to make him very grateful. He looked most unto those parts of the law which disposed him to least reverence to the crown, and most to popular authority, yet without inclination to any change in government; and therefore before the beginning of the civil war, and when he clearly discerned the approaches to it in parliament (of which he was a member), he withdrew himself into the fastnesses of his own country, North Wales, where he enjoyed a secure and as near an innocent life as the iniquity of that time would permit; and upon the return of king Charles II. he appeared under the character of a man who had preserved his loyalty entire, and was esteemed accordingly by all that party." *Clarendon's Life*, vol. i. p. 52, ed. 1759. He was born 14th of Sept. 1603, and died 10th of December, 1674. See the Preface to his Reports.

NOTE 27. p. 64. — "In republica ita est versatus ut semper optimarum partium et esset et existimaretur; neque tamen se civilibus fluctibus committeret, quod non magis eos in sua potestate existimabat esse, qui se iis dedissent quam qui maritimis jactarentur." — *Cor. Nep.*

NOTE 28. p. 64. — This appears from the following note in the State Trials. "The Lord Chancellor Finch told me that this argument was not Mr. Herne's, though he pronounced it, for he could not argue, but it was Mr. Hale's, afterwards lord chief justice. And he said further, that being then a young lawyer he stood behind Mr. Herne when he spake at the bar of the lords' house, and took notes of it." Vol. iv. p. 677. Though Herne could not argue, he could make a witty reply. When Serjt. Wilde in answer to the argument observed that they did not allege that any one crime of Laud's amounted to high treason, but that all his misdemeanors by way of accumulation made many grand treasons, Herne answered, "I crave your mercy, good Mr. Serjeant; I never understood before this time that two hundred couple of black rabbits would make a black horse."

NOTE 29. p. 65. — As to the efforts of the long parliament to effect a reform in the law, see Godwin's Hist. of the Commons, vol. iii. p. 573. and consult *Scobel*. It would seem from what is said by Hale in his tract on the *Amendment of the Laws*, p. 274. that at this time he did not favour the project of a legal reform.

NOTE 30. p. 66. — Though the tender of amends has been introduced by statute in some particular cases, yet in general a party who has committed a wrongful act has no power of making compensation.

NOTE 31. p. 67. — Burnet adds, "If he made no declaration of acknowledging their authority, *which he never did.*" This is not correct, for as before mentioned he took the engagement, and in fact the acceptance of office was a direct acknowledgment of their authority.

NOTE 32. p. 69. — Hale, and Thorpe a Baron of the Exchequer, were the only judges who served in this Parliament. — *Godwin*, vol. iv. p. 112.

NOTE 33. p. 71. — In an interview with Mr. Langton, Hale said, "that 1000*l.* a year was a great deal for any common lawyer to get; and Mr. B. said that Mr. Winnington did make 2000*l.* a year by it. My Lord answered that Mr. Winpington made great advantages by his city practice, but did not believe that he made so much of it."— *Seward's Anecdotes*, vol. iv. p. 419.

NOTE 34. p. 72. — "Nothing has ever been found more vindictive and cruel than fanaticism acting under the influence of preternatural terror, and assuming to punish offences created by its own gloomy reveries. Under such circumstances it becomes itself the very demon whose agency it seeks to destroy. It loses sight of all the common principles of reason and of evidence. It sees nothing around it but victims for sacrifice. It hears nothing but the voice of its own vengeance. It believes nothing but what is monstrous and incredible. It conjures up every phantom of superstition, and shapes it to the living form of its own passions and frenzies. In short, insanity could hardly devise more refinements in barbarity, or profligacy execute them with more malignant coolness. In the wretched butcheries of those times (for so, in fact, they were) in which law and reason were equally set at defiance, we have shocking instances of unnatural conduct. We find parents accusing their children, children their parents, and wives their

husbands, of a crime which must bring them to the scaffold. We find innocent persons misled by the hope of pardon, or wrought up to frenzy by the pretended sufferings of others, freely accusing themselves of the same crime. We find gross perjury practised to procure condemnations, sometimes for self-protection, and sometimes from utter recklessness of consequences. We find even religion itself made an instrument of vengeance. We find ministers of the gospel and judges of the land stimulating the work of persecution, until, at last, in its progress, its desolations reached their own firesides."—*A Discourse pronounced at the Request of the Essex Historical Society in commemoration of the first settlement of Salem, Massachusetts, by Judge Story. Boston, U. S.* 1828.

NOTE 35. p. 76.—In another place the same writer gives a much more favourable character of Hale, describing him as "a most propitious judge to a poor man's cause; and before him if any leaning were, it was of his favour to that side that seemed to be oppressed."—*North's Examen*, p. 550.

NOTE 36. p. 81.—"It is much to be lamented," says Mr. Butler, "that he did not carry into execution his favourite object, a complete edition of the printed and MS. works of Sir Matthew Hale, an eternal monument of the profound knowledge, possessed by that great man, of the laws and constitution of this kingdom. They are distinguished by deep and extensive learning, patient investigation, method, and perspicuity. His language is always guarded, and he carefully avoids drawing any conclusion which his premises do not warrant. He deserved such an editor as Mr. Hargrave."—*Reminiscences*, vol. i. p. 121.

NOTE 37. p. 82.—A more competent judge of the merits of this work could not have been found than Dr. Parr, who has thus spoken of a portion of it:—"Much as I have been delighted and interested by the representations which Plato and Xenophon have given of their illustrious contemporary Socrates, I confess myself to have been equally delighted, and more delighted, and more interested, by Hale's *Account of the good Steward*.—'It is the very picture,' as says the Editor, 'wherein, representing the good steward passing his account, it was impossible for him not to give a lively representation of himself;' and rarely do we meet with an instance in which any man speaks so unreservedly and so largely of his own opinions and actions with so much propriety. Upon every account of matter, style, and spirit, it is a work which deserves to be read every year by every 'light of the Church, and every sage of the Law' in Christendom."—*Characters of Fox*, vol. ii. p. 316.

NOTE 38. p. 86.—For an account of Sir Geoffrey Palmer, see the *Examen*.

NOTE 39. p. 96.—See *Selwyn's Nisi Prius*, title *Statute of Frauds*.

NOTE 40. p. 101.—"I have heard," says Roger North, "Sir John Churchill, a famous chancery practiser, say, that in his walk from Lincoln's Inn down to the Temple Hall, where, in the Lord Keeper Bridgman's time, causes and motions out of term were heard, he had taken 28*l.* with breviates only for motions and defences for hastening and retarding hearings."—*Life of Lord Guilford*, vol. i. p. 425. new edition.

NOTE 41. p. 113. — The most copious details as to the life of Jefferies will be found in the memoirs of him by Mr. Woolrych. It is to be regretted, however, that the author has not always cited his authorities.

NOTE 42. p. 119. — The reader who is attached to the study of legal biography, will not forget the admirable portrait of Saunders in the life of the Lord Keeper Guilford.

NOTE 43. p. 146.—Johnson says, The poem was ascribed to Somers.—*Lives of the Poets*, vol. ii. p. 89. Sir Walter Scott in his *Life of Dryden*, p. 257. says, that Lord Somers positively disavowed the poem. See also *Malone's Life of Dryden*, p. 116. "The gross ribaldry of it cannot be supposed to have flowed from so humane and polished a nature as Lord Somers." —*Horace Walpole's Works*, vol. i. p. 432.

NOTE 44. p. 173. — Mr. Booth was a Roman Catholic. He is noticed by Mr. Butler in his *Historical Memoirs of the English Catholics*. "Mr. James Booth, acknowledged to be the father of the modern practice of conveyancing, was not the author of any work; but his written opinions were given at great length and are very elaborate. They are held in great esteem, and always mentioned at the bar and from the bench with great respect. The copies of them are numerous, and in the works entitled, *Printed Copies of Opinions of Eminent Counsel*, several of them found their way to the press." Vol. ii. p. 337.

NOTE 45. p. 229. — The present Memoir is altogether derived from the *Memoirs of the Life of the R. H. Sir John Eardley Wilmot, knt. &c. by John Wilmot, esq.*

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